

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF
YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC.
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

MOTION RECORD
(Returnable May 24, 2022 –
Approval of Settlement)

May 12, 2022

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**ONTARIO
SUPERIOR COURT OF JUSTICE
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TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF
YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC.
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

NOTICE OF MOTION
(Returnable May 24, 2022 –
Approval of Settlement)

KSV Restructuring Inc. ("**KSV**"), in its capacity as the proposal trustee (the "**Proposal Trustee**") in connection with the Notices of Intention to Make a Proposal filed on April 30, 2021 by YG Limited Partnership and YSL Residences Inc. (collectively, "**YSL**") pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") will make a motion to a judge presiding on the Commercial List on May 24, 2022 at 10:00 a.m., or as soon thereafter as the motion can be heard, by judicial videoconference due to the COVID-19 pandemic.

PROPOSED METHOD OF HEARING:

The motion is to be heard orally.

THE MOTION IS FOR AN ORDER:

1. if necessary, validating and abridging the time of service of the Notice of Motion and Motion Record and directing that any further service of the Notice of Motion and Motion Record be dispensed with such that this Motion is properly returnable on the date scheduled for the hearing of this Motion; and

2. approving the settlements between the Proposal Trustee and each of Mssrs. Cicekian, Catsiliras, Giannaakopoulos, Mancuso and Millar (collectively, the “**Settlements**”) as contained in the Fifth Report of the Proposal Trustee dated May 11, 2022 (the “**Report**”).

THE GROUNDS FOR THE MOTION ARE:

1. Each of Mssrs. Cicekian, Catsiliras, Giannaakopoulos, Mancuso and Millar (collectively, the “**Claimants**”) filed proofs of claim in these proposal proceedings;

2. There are no inspectors appointed in these proposal proceedings;

3. The Proposal Trustee is charged with administering all claims pursuant to the terms of the proposal sanctioned by this Court by Order dated July 16, 2021 (the “**Proposal**”) and the BIA;

4. The Settlements falls within the range of what is fair and commercially reasonable under the circumstances;

5. There has been no material and relevant prejudice so as to taint the process to the degree that the Court ought not to approve the Settlements;

6. The Settlements are the result of extensive negotiations between the Proposal Trustee and counsel to the Claimants and the Proposal Trustee is recommending their approval;

7. The Settlements avoid the continued costs, time and uncertainty of litigating the claims;

8. The BIA authorizes the Proposal Trustee to compromise any claim made against the estate;

9. Rules 1.04, 2.03, 3.02, 16.04 and 37 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended;

10. Sections 30(1)(i), 30(3), 66 and 135 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended; and

11. Such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

1. the Report; and

2. such further material as counsel may advise and this Court may permit.

May 12, 2022

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TO: The attached Service List

**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF
YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC.**

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

(PROCEEDING COMMENCED AT TORONTO)**

NOTICE OF MOTION
(Returnable May 24, 2022 –
Approval of Settlements)

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**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF
YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC.
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

**SERVICE LIST
Updated May 11, 2022**

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TAB 2



**Fifth Report to Court of
KSV Restructuring Inc. as Proposal
Trustee of YG Limited Partnership and
YSL Residences Inc.**

May 11, 2022

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COURT FILE NO.: BK-21-02734090-0031

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF
YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC.,
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

FIFTH REPORT TO COURT OF
KSV RESTRUCTURING INC. AS PROPOSAL TRUSTEE

MAY 11, 2022

1.0 Introduction

1. This report (“Report”) is filed by KSV Restructuring Inc. (“KSV”) in its capacity as proposal trustee (the “Proposal Trustee”) in connection with Notices of Intention to Make a Proposal (“NOIs”) filed on April 30, 2021 (the “Filing Date”) by YG Limited Partnership (the “Partnership”) and YSL Residences Inc. (“Residences”, and together with the Partnership, the “Companies”), pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “BIA”).
2. On May 14, 2021, the Ontario Superior Court of Justice (Commercial List) (the “Court”) issued an order (the “Consolidation Order”) procedurally and substantively consolidating the NOI proceedings of the Partnership and Residences (the “NOI Proceedings”) for the purpose of simplifying the administration of the NOI Proceedings, including filing a joint proposal and convening a single meeting of creditors.
3. The principal purpose of this proceeding was to create a stabilized environment to allow the Companies to present a proposal that provides creditors with a recovery greater than they would receive in a bankruptcy or alternative insolvency process.
4. On May 27, 2021, the Companies filed a proposal with the Official Receiver in accordance with Section 62(1) of the BIA (the “Proposal”). A Certificate of Filing a Proposal (the “Certificate”) was issued by the Office of the Superintendent of Bankruptcy (Canada) (“OSB”) on May 28, 2021. On June 3, 2021, the Companies filed an amended proposal to include Conditional Claims (as defined therein) and make other clarifications to the Proposal (the “First Amended Proposal”). On June 15, 2021, the Companies filed another amendment to the First Amended Proposal, which narrowed the scope of the releases in the First Amended Proposal (the “Second Amended Proposal”).

5. Pursuant to a meeting of creditors held on June 15, 2021 (the “Creditors’ Meeting”), the creditors voted to accept the Second Amended Proposal. No inspectors were appointed in the Proposal.
6. On June 23, 2021, the Companies sought Court approval of the Second Amended Proposal. Pursuant to the Reasons for Interim Decision of the Court made on June 29, 2021, as amended on July 2, 2021 (the “Interim Decision”), the Court did not approve the Second Amended Proposal. A Court hearing for approval of the Second Amended Proposal was scheduled for July 9, 2021 to allow the Companies time to address the Court’s findings in the Interim Decision and, should they wish, to present a further amended proposal for the Court’s consideration. A copy of the Interim Decision is provided in Appendix “A”.
7. Early in the day on July 9, 2021, Concord Properties Developments Corp., the sponsor of the proposals filed in this proceeding (the “Sponsor”), served a further amended proposal (the “Third Amended Proposal”) and an offer (the “Equity Offer”) of distributions to be made outside of the Third Amended Proposal by the Sponsor to any equityholders¹ of the Partnership (the “Equityholders”) willing to accept such Offer.
8. Pursuant to Section 3.03 of the Second Amended Proposal and the Third Amended Proposal, the Companies required the consent of the Proposal Trustee to file the Third Amended Proposal. The Proposal Trustee did not have the time it required to review the Third Amended Proposal prior to the July 9, 2021 hearing. Accordingly, the Court granted a further adjournment to July 16, 2021 to provide time for the Proposal Trustee to consider the Third Amended Proposal and for the Proposal Trustee to present a recommendation to the Court.
9. The Proposal Trustee’s Fourth Report to Court dated July 15, 2021 summarized, among other things, the material changes between the Second Amended Proposal and the Third Amended Proposal, as well as further changes to the Third Amended Proposal (the “Final Proposal”) and provided the Proposal Trustee’s recommendation to the Court that it approve the Final Proposal.
10. Pursuant to Reasons for Decision dated July 16, 2021, as amended on July 27, 2021 (the “Decision”), the Court approved the Final Proposal. A copy of the Decision is provided in Appendix “B”.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information about the Companies;

¹ Defined in the Final Proposal as the holders of the limited partnership units of YG LP and those Equity Claims deemed to be equity pursuant to the Interim Decision.

- b) summarize the Proposal Trustee's settlements with five former employees (the "Former Employees") of Cresford (as defined below), which are subject to Court approval (the "Settlement Agreements");
- c) summarize the status of certain unresolved claims; and
- d) recommend that the Court approve the Settlement Agreements.

1.2 Currency

1. All currency references in this Report are to Canadian dollars.

1.3 Definitions

1. Capitalized terms not defined in the Report have the meanings provided to them in the Final Proposal.

1.4 Restrictions

1. In preparing this Report, the Proposal Trustee has relied upon unaudited financial information prepared by the Companies' representatives, the Companies' books and records and discussions with representatives of the Companies, the Sponsor and Concord Adex Inc. ("Concord"), an entity related to the Sponsor.
2. The Proposal Trustee has not performed an audit or other verification of the financial and other information provided to it. An examination of the Companies' financial forecasts as outlined in the Chartered Professional Accountants of Canada Handbook has not been performed. Future oriented financial information relied upon in this Report is based on the Companies' and Concord's assumptions regarding future events; actual results achieved may vary from this information and these variations may be material. The Proposal Trustee expresses no opinion or other form of assurance with respect to the accuracy of any financial information relied upon by the Proposal Trustee in its preparation of this Report.

2.0 Background

1. Information regarding, among other things, the Companies, the real estate project that was being developed by the Companies known as Yonge Street Living Residences (the "YSL Project"), the history of this proceeding, applications by certain of the Partnership's limited partners (the "Limited Partners") and the prior proposals filed in this proceeding is included in the Proposal Trustee's reports to Court and other materials filed with the Court and is therefore not repeated herein.
2. Court materials filed in this proceeding are available on the Proposal Trustee's website at <https://www.ksvadvisory.com/insolvency-cases/case/yg-limited-partnership>.

3.0 Final Proposal

1. The Final Proposal provides for distributions to the Affected Creditors to the maximum of the Affected Creditor Cash Pool, being a cash pool in the amount of \$30.9 million to be distributed pro rata to Affected Creditors with Affected Creditor Claims. The Final Proposal also provides that if any residual amount remains in the Affected Creditor Cash Pool following the final distributions to Affected Creditors, such residual funds, if any, would be held by the Proposal Trustee “pending receipt of a duly issued direction from all of the holders of Class A Preferred Units of YG LP, or otherwise by order of the Court”. A copy of the Final Proposal is provided as Appendix “C”.
2. On July 22, 2021, the Sponsor funded the Affected Creditor Cash Pool. The corporate transactions summarized in Section 6.01 of the Final Proposal were completed on the same day.
3. Sections 10.01 and 11.01 of the Final Proposal require the Proposal Sponsor to fund the costs of the Proposal Trustee, including the costs to assess all claims filed in these proceedings. As discussed herein, three of the claims are being litigated.

4.0 Creditors

1. The status of the claims filed with the Proposal Trustee as of the date of this Report is summarized below.

Creditor	Amount (\$000)
Affected Creditor Claims	
Proven Claims at allowed amounts	13,044 ²
Former Employees at proposed settlement amounts	1,710 ³
Maria Athanasoulis (disputed)	19,000
CBRE Limited (“CBRE”) (disputed)	1,239
Henry Zhang (settled by the Proposal Trustee, disputed by the LPs)	1,130 ⁴
Total Affected Creditor Claims	36,123

4.1 Proven Claims

1. Other than the amounts discussed below, proofs of claim totalling \$17.9 million were filed against the Companies. Of this total, claims of approximately \$9.7 million were filed by real estate brokers in respect of unpaid commissions on condominium sales. Pursuant to Section 135 of the BIA, the Proposal Trustee reviewed each of these claims and either accepted them or issued Notices of Revision or Disallowance pursuant to Section 135(2) of the BIA⁵. These claims are included in the Proven Claims referenced in the table above.

² Includes a claim of approximately \$16,000 filed on May 5, 2022. This claim was not included in the interim distribution referenced in Section 4.1(2) of this Report.

³ Represents the aggregate of the claims, as filed. These are discussed further in Section 4.2 of this Report.

⁴ Includes HST.

⁵ Notices of Revision or Disallowance were issued to three creditors, resulting in a reduction of approximately \$4.9 million to the total claims.

2. On March 24, 2022, the Proposal Trustee paid an interim distribution of 70¢ on the dollar to the creditors with Proven Claims. The Proposal Trustee has reserved the balance of the Affected Creditor Cash Pool until the unresolved claims can be determined.

4.2 Former Employees

1. Ryan Millar, Louie Giannakopoulos, Ryan Mancuso, Sarven Cicekian and Mike Catsiliras, being five former employees or contractors of the Cresford Group of Companies (“Cresford”), affiliates of the Companies, filed claims totalling approximately \$3.058 million, which included a credit adjustment for estimated distributions to be received in other Cresford proceedings. These individuals advanced claims alleging that the Companies are a common employer with other Cresford entities in respect of, among other things, wrongful dismissal, unpaid bonuses and commissions. Copies of the proofs of claim are provided in Appendix “D”.
2. The Companies did not employ any individuals. Similar to other real estate developers, the Cresford group has one entity, East Downtown Redevelopment Partnership (“EDRP”), which acts as the main employer for the purpose of providing administrative and other services to the various development companies in the Cresford group. In assessing the Former Employee claims, the Proposal Trustee and Davies Ward Phillips & Vineberg LLP (“Davies”), the Proposal Trustee’s legal counsel, considered common employer arguments advanced by the Former Employees, the Proposal Trustee’s understanding of Cresford’s corporate structure, as well as common employer case law.
3. The Proposal Trustee and Davies reviewed the Former Employee claims and discussed them with representatives of Cresford, Cresford’s counsel and counsel to the Former Employees, Naymark Law (“Naymark”). The Proposal Trustee also reviewed support provided by the Former Employees and Cresford, including:
 - a) the employment agreements between each of Messrs. Millar, Giannakopoulos and Mancuso with Cresford Developments, an affiliate of Cresford. Notwithstanding their employment agreements, these employees were paid by EDRP;
 - b) the independent contractor agreements between each of Messrs. Cicekian and Catsiliras and Cresford (Rosedale) Developments Inc., another Cresford entity. The Proposal Trustee understands that Messrs. Cicekian and Catsiliras worked exclusively for Cresford;
 - c) materials filed with the Court in the proceedings bearing Court File No. CV-20-00637543-0000 in which Messrs. Cicekian and Catsiliras filed a statement of claim against Cresford, Daniel Casey, Cresford’s founder, and David Mann, Cresford’s CFO;
 - d) historical payroll registers and general ledger accounts;
 - e) email correspondence between the Former Employees and representatives of Cresford;

- f) prior settlement agreements between Cresford and each of Messrs. Mancuso and Giannakopoulos; and
 - g) the treatment of similar claims of Messrs. Millar and Catsiliras filed in the insolvency proceedings of other Cresford entities, being 480 Yonge Street Inc. and 480 Yonge Street Limited Partnership and 33 Yorkville Residences Inc. and 33 Yorkville Residences Limited Partnership, including discussions with PricewaterhouseCoopers Inc., the court-officer appointed in those proceedings, and its counsel, McCarthy Tetrault LLP.
4. Based on its review of the claims, the Proposal Trustee and Davies assigned probability ratings to each aspect of each of the Former Employee claims, taking into consideration the evidence provided by each Former Employee. The probability ratings were then used as the basis to make settlement offers to each of the Former Employees.
5. The table below provides a summary of the final settlement amount of each Former Employee claim, which is the result of numerous discussions and rounds of negotiations with their counsel, Naymark.

Former Employee	Proof of Claim, as Filed (\$) ⁶	Settlement (\$)
Millar	734,997	450,000
Giannakopoulos	444,615	308,067
Mancuso	430,000	300,281
Cicekian	767,399	383,118
Catsiliras	681,190	268,641
Total	3,058,201	1,710,107

6. Each settlement agreement is subject to Court approval for the following reasons:
- a) two of the Former Employees were litigating against Cresford, and therefore Cresford has not participated in the settlement discussions, except to provide background information related to each claim;
 - b) the Limited Partners may be entitled to distributions in these proceedings. Any amounts that are distributed to the Former Employees reduce the amount available for distribution to the Limited Partners;
 - c) other Affected Creditors may be impacted by distributions to the Former Employees;
 - d) no inspectors have been appointed in this proceeding;

⁶ These amounts include an estimated credit adjustment of \$167,750 and \$68,750 for Messrs. Millar and Catsiliras, respectively, resulting from distributions to be received in other Cresford proceedings. Naymark subsequently advised the Proposal Trustee that the actual credits received were higher than estimated, resulting in a credit adjustment of \$254,000 and \$97,000 to the claims filed by Messrs. Millar and Catsiliras, respectively. The actual credits are reflected in the settlement amounts.

- e) this proceeding has been extensively contested, and accordingly, the Proposal Trustee considers it appropriate that the Settlement Agreements be approved by the Court prior to distributions being made to the Former Employees; and
 - f) the Settlement Agreements provide that they are “entirely without prejudice to the Creditor’s rights to argue any position regarding the validity and quantum of its claim on the motion seeking the Approval Order (or on any appeal thereof) if any party objects to the approval of these Minutes of Settlement. If the Approval Order is not granted, then the Creditor shall be entitled to argue any position regarding the validity and quantum of its claim as if these Minutes of Settlement had not been entered into and nothing herein shall be used in any way in adjudicating or negotiating a resolution of the Creditor’s claim”.
7. Copies of the Settlement Agreements with each of the Former Employees are provided in Appendix “E”.

4.2.1 Recommendation

1. The Proposal Trustee recommends that the Court approve the Settlement Agreements for the following reasons:
 - a) the settlements are the result of extensive negotiations between the Proposal Trustee and counsel to the Former Employees;
 - b) the BIA authorizes the Proposal Trustee to compromise any claim made against the estate;
 - c) the settlements avoid the continued cost, time and uncertainty of litigating the claims;
 - d) in the Proposal Trustee’s view, the settlements are fair and commercially reasonable in the circumstances; and
 - e) no further funding will be required from the Sponsor to have these claims determined. In the Proposal Trustee’s view, the Sponsor should not be required to fund litigation costs where extensive efforts have been undertaken to settle claims on a basis considered fair and commercially reasonable by the Proposal Trustee. If other stakeholders believe that the claims should be contested, the Proposal Trustee believes that they should be required to fund those costs.

5.0 Status of Other Claims

5.1 Ms. Athanasoulis

1. Ms. Athanasoulis, Cresford’s former President and Chief Operating Officer, filed a claim in the amount of \$19 million. The claim is related to a Statement of Claim she filed on January 21, 2020 against the Companies, other Cresford affiliates and Mr. Casey (the “Athanasoulis Claim”). The Athanasoulis Claim is in respect of, *inter alia*, allegations of:
 - a) wrongful dismissal in the amount of \$1 million; and

- b) damages in the amount of \$18 million for breach of an oral agreement that the owner of each Cresford project, including the YSL Project, would pay Ms. Athanasoulis 20% of the profits earned on each project.
2. The Proposal Trustee and Ms. Athanasoulis agreed to arbitrate the determination of liability (i.e., did a contract exist that was breached?) and quantum (i.e., what is the quantum of damages flowing from such breach?) in respect of her claim before William G. Horton, an experienced commercial litigator and arbitrator. The arbitration proceeding is ongoing.
3. The Proposal Trustee will bring a motion to the Court to approve the Proposal Trustee's recommended treatment of this claim in this proceeding after a final decision has been rendered in the arbitration or a settlement has been reached between the parties.

5.2 CBRE

1. CBRE, a real estate brokerage, filed a proof of claim dated January 28, 2022 in the amount of approximately \$1.2 million. The claim relates to an invoice submitted by CBRE to "Cresford" dated October 13, 2021 and refers to services rendered by CBRE in connection with serving as the exclusive listing brokerage for the YSL Project.
2. The Proposal Trustee disallowed CBRE's claim in full for the reasons set out in its Notice of Disallowance of Claim dated February 10, 2022 (the "CBRE Notice"). A copy of the CBRE Notice is provided as Appendix "F".
3. CBRE appealed the CBRE Notice. The appeal is scheduled to be heard on September 26, 2022.

5.3 Mr. Zhang

1. Mr. Zhang, a real estate broker, filed a proof of claim dated September 19, 2021 in the amount of approximately \$1.7 million. For reasons that will be provided in a further report to Court, the Proposal Trustee ultimately accepted the claim for \$1 million (plus HST) filed by Harbour International Investment Group Inc. ("Harbour International"), a company owned by Mr. Zhang, and not by Mr. Zhang personally.
2. The Limited Partners disagree with the Proposal Trustee's acceptance of this claim. The Limited Partners have issued a Notice of Motion in which they seek an Order, among other things, setting aside the Proposal Trustee's acceptance of Harbour International's claim.
3. The Proposal Trustee, the Limited Partners, the Sponsor and the Companies are discussing procedural issues related to the proposed motion by the Limited Partners, which has not yet been scheduled.
4. Neither Mr. Zhang nor Harbour International received an interim distribution in respect of this claim.
5. The issue raised in paragraph 4.2.1(e) above is a consideration in the context of this and all other remaining claims.

6.0 Conclusion

1. Based on the foregoing, the Proposal Trustee recommends that the Court make an order approving the Settlement Agreements.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.
IN ITS CAPACITY AS PROPOSAL TRUSTEE OF
YG LIMITED PARTNERSHIP AND
YSL RESIDENCES INC.,
AND NOT IN ITS PERSONAL CAPACITY**

Appendix “A”

CITATION: YG Limited Partnership and YSL Residences (Re), 2021 ONSC 4178
COURT FILE NOS.: CV-21-00655373-00CL/BK-21-02734090-0031,
CV-21-00661386-00CL & CV-21-00661530-00CL
DATE: 20210629

**SUPERIOR COURT OF JUSTICE – ONTARIO
(COMMERCIAL LIST)**

RE: IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, C. B-3, AS AMENDED

AND:

IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A
PROPOSAL OF YG LIMITED PARTNERSHIP AND YSL RESIDENCES

APPLICATION UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, C. B-3, AS AMENDED

AND RE: 2504670 CANADA INC., 8451761 CANADA INC. and CHI LONG INC.,
Applicants

AND

CRESFORD CAPITAL CORPORATION, YSL RESIDENCES INC,
9615334 CANADA INC., YG LIMITED PARTNERSHIP and DANIEL
CASEY, Respondents

AND RE: 2583019 ONTARIO INCORPORATED AS GENERAL PARTNER OF
YONGESL INVESTMENT LIMITED PARTNERSHIP, 2124093 ONTARIO
INC., SIXONE INVESTMENT LTD., E&B INVESTMENT CORPORATION
and TAIHE INTERNATIONAL GROUP INC., Applicants

AND

9615334 CANADA INC. AS GENERAL PARTNER OF YG LIMITED
PARTNERSHIP and YSL RESIDENCES INC., Respondents

BEFORE: S.F. Dunphy J.

COUNSEL: *Harry Fogul and Miranda Spence*, for YG Limited Partnership and YSL
Residences Inc.

Shaun Laubman and Sapna Thakker, for 2504670 Canada Inc., 8451761
Canada Inc., and Chi Long Inc.

Alexander Soutter, for YongeSL Investment Limited Partnership, 2124093 Ontario Inc., SixOne Investment Ltd., E&B Investment Corporation, and TaiHe International Group Inc.

David Gruber, Jesse Mighton, and Benjamin Reedijk, for Concord Properties Developments Corp. and its affiliates

Jane Dietrich and Michael Wunder, for 2292912 Ontario Inc. and Timbercreek Mortgage Servicing Inc.

Robin B. Schwill, for KSV Restructuring Inc. in its capacity as the proposal trustee

Roger Gillot and Justin Kanji, for Kohn Pedersen Fox Associates PC

Reuben S. Botnick, for Royal Excavating & Grading Limited COB as Michael Bros. Excavation

Daniel Naymark and Jamie Gibson, for Sarven Cicekian, Mike Catsiliras, Ryan Millar and Marco Mancuso

Brendan Bowles and John Paul Ventrella, for GFL Infrastructure Group Inc.

Mark Dunn and Carlie Fox, for Maria Athanasoulis

George Benchetrit, for 2576725 Ontario Inc.

Joshua B. Sugar, for R. Avis Surveying Inc.

Paul Conrod, for Restoration Hardware Inc.

James MacLellan and Jonathan Rosenstein, for Westmount Guarantee Services Inc.

Albert Engle, for Priestly Demolition Inc.

HEARD at Toronto: June 23, 2021

AMENDED REASONS FOR INTERIM DECISION

Note: these reasons were amended on July 2, 2021 as more fully described in the in the concluding paragraphs hereof.

[1] The debtors are seeking approval of a bankruptcy proposal that has obtained the near unanimous approval of those affected creditors who cast a vote. Two groups of limited partnership unitholders have challenged the actions of the General Partner of the debtor YG Limited Partnership for much of the past year and urge me to annul the bankruptcy entirely or to reject the proposal and, if need be, to allow a Receiver or Trustee in bankruptcy to canvass the market fairly and objectively. Another unsecured creditor urges me to disregard much of the appraisal evidence tendered because she has been excluded from examining it and the result is a record that casts grave doubt as to whether fair value for stakeholders is being realized by this process.

[2] For the reasons that follow, I have decided that I will not approve the Proposal in the form it has been presented to me. The Proposal is yet able to be amended pursuant to art. 3.01 thereof and it is possible that an amendment may be formulated to address the concerns raised by the findings I outline below before a final decision on the fate of the Proposal is made.

Background facts

[3] A central issue in this case is the value of the “YSL Project” – the property owned by the debtor YSL as bare trustee for the limited partnership (the debtor YG LP) charged with developing it. Valuation is an area on which I must tread lightly in terms of what I can record in writing so as not to impact adversely any potential sale process that may be necessary in future.

[4] What follows is a general description of the capital structure of the debtors and the project sufficient to permit an understanding of the issues. For comparison purposes, it is relevant to consider the size of the project. There is no dispute that the “as if completed” value of the project is above \$1 billion. How much above and based on which assumptions is an issue, but I provide the round figure solely for comparison purposes relative to the debt and equity interests discussed.

[5] The project is fully zoned and permitted for construction of an 85-story retail and condominium complex planned for the corner of Yonge St. and Gerard in downtown Toronto. Substantial pre-sales have been made. Demolition of the old structures and shoring up of the excavation have been largely completed. Unfortunately, things ground to halt in March of 2020 and the project has been stuck in the “hole in the ground” stage ever since.

The project ownership structure

[6] YP GP has a General Partner with nominal capital and a nominal interest in the limited partnership. The “equity” in the partnership effectively resides in the “A” units with approximately \$14.8 million in capital but a capped right to return on that capital equivalent

to interest (12.25% per year rate of return) and the “B” units who alone receive all of the residual profits from the project without limit.

[7] The owner of the “B” units and the General Partner are under common control within the Cresford group of companies as are the parties recorded as payees of the \$38.3 million related party debt to which I shall refer.

The project debt structure

[8] The secured debt – including registered mortgages and construction liens – stands at about \$160 million. The figure for secured debt is slightly misleading. There is just over \$100 million in deposits from condominium pre-sales made for the most part prior to 2019. These are insured by the second secured creditor whose claim would increase dollar for dollar if the relevant purchase agreements were repudiated and the deposits had to be returned. For this reason and to have an “apples to apples” idea of the debt structure, a figure of about \$260 million in secured debt is appropriate.

[9] The third-party unsecured debt that has been identified by the Trustee is in the range of approximately \$20 million plus or minus a few million dollars depending upon reserves allowed for claims yet to be filed or finalized. There are also various litigation claims outstanding the largest of which is from a former officer claiming that the limited partnership was a common employer and seeking, among other things, to enforce oral profit-sharing agreements. I have reviewed the Trustee’s report and in particular the Trustee’s reasoned conclusion that these claims are too contingent to be considered valid for voting purposes. I concur in that assessment. A conservative and prudent assessment of potential total unsecured claims is thus in the range of about \$25 million – a figure advanced with full knowledge that the total of all contingent claims identified could be in the same order of magnitude again. For the purposes of this motion, I find the figures estimated by me above are reasonable – those findings are, of course, without prejudice to the creditors holding such claims proving them in due course.

[10] There is also \$38.3 million in outstanding advances to YG LP recorded on its books from related parties. I have found those claims to be equity claims for all purposes relevant to this hearing for reasons I shall expand upon below.

[11] In round figures, one can thus consider there to be approximately \$260 million of secured debt and about \$20-\$25 million of unsecured debt outstanding. The Proposal assumes all of the former and would pay 58% of the latter when finalized. The “fulcrum” stakeholders in this case are thus the unsecured creditors to the extent of the 42% of their claims that are compromised (\$8.4 to \$10.5 million) plus the “A” limited partners in YG LP (\$14.8 million plus accrued “interest” entitlements) – such figures based upon the estimates and rulings that I have made and explained herein.

Summary of nine findings made

[12] The process of sifting through the mountains of evidence presented to me by the parties has been made exceptionally time-consuming and tedious by reason of the lack of usable electronic indexing in much of the materials filed. Tabs or electronic hyperlinks within compilations of electronically filed documents are non-existent in all but the most recently filed documents and there are many, many thousands of pages of documents presented. The profession is going to need to get on top of this problem as judges cannot and will not in future undertake such gargantuan efforts to sift through a case when a few moments of care and attention at the front end could simplify it to such a great degree.

[13] Time does not permit me to set forth in writing a complete account of my review of the evidence and my conclusions – a written summary of which I was about 75% through before the impossibility of completing it in the form intended within the time available became obvious. I shall instead present below nine conclusions which encapsulate my reasons for finding that the Proposal as it currently stands has failed to satisfy me of the matters required by s. 59(2) of the BIA or the common law test of good faith.

(i) *The McCracken Affidavit is inadmissible*

[14] As is often the case in Commercial Court matters, this case proceeded on a “real time” schedule. In addition to the bankruptcy case that was commenced with an NOI filed on behalf of the debtors on April 30, 2021, there were two applications commenced the day before by two groups of YG LP limited partners seeking, among other things, the removal of the General Partner and various declarations challenging the authority of the General Partner to act on behalf of the partnership in any capacity and alleging breaches of fiduciary duty by the General Partner. The Proposal itself was filed on May 27, 2021 working towards a scheduled June 10, 2021 creditor meeting. On June 1, 2021 I issued directions for the conduct of all three proceedings with a view to having the sanction hearing ready to proceed on June 23, 2021.

[15] The Proposal Sponsor is Concord Properties. Concord is not a party to any of these proceedings although it is central to all three. Concord sponsored the Proposal and is bearing all the costs of it under a Proposal Sponsor Agreement dated April 30, 2021.

[16] The limited partner applicants issued subpoenas to Mr. McCracken – apparently the officer of Concord responsible for this Proposal. On the advice of counsel, Mr. McCracken declined to appear absent an order compelling him to do so. Counsel took the position that leave was required under the Bankruptcy Rules to compel him to appear in the bankruptcy proceeding and declined to produce him.

[17] The position taken was a curious one given my specific direction on June 1 that I was *not* applying the BIA stay to the two applications and that specific aspects of both

applications would be heard and decided together on June 23, 2021 when the fairness hearing was conducted. The case timetable made specific allowances for responding records with respect to the limited partner applications and facts in relation to them. My ruling on June 1, 2021 was in both the civil and bankruptcy proceedings and bore the style of cause of both.

[18] Whether leave was or was not formally required to *compel* Mr. McCracken to appear, his failure has consequences in terms of the fairness of the process leading to the approval motion in front of me. The opponents of the Proposal were deprived of the opportunity to explore aspects of the unfairness or unreasonableness of the Proposal that they had raised. There was insufficient time available in the tight timetable to drop everything and bring a leave application. The position taken ran utterly contrary to the spirit and intent of my ruling on June 1, 2021 at which Concord's counsel appeared *and made submissions*. This is the sort of issue that counsel applying the "three C's" of the Commercial List ought to have agreed to disagree upon and produced the witness without prejudice to objections that might be raised.

[19] It is against the foregoing backdrop that the affidavit of Mr. McCracken – delivered the day prior to the fairness hearing – must be considered.

[20] The affidavit was filed far too late to permit any interested party to respond to it effectively or to cross-examine upon it. None of the subject-matter of the affidavit was new information. The affidavit was entirely devoted to providing responses to various issues seen in written arguments or that arose on the cross-examination of other witnesses.

[21] Concord appeared to consider itself sufficiently at interest to appear through counsel on June 1, 2021 while declining to submit to examination because of its non-party status when preparations for this hearing were in full swing a few days later. Permitting the admission of this affidavit at this juncture would be to sanction unfairness of the highest order. A timetable was worked out for the hearing of this motion – worked out, I might add, at a motion that Concord was present at through counsel. Whether or not Concord had the *right* to insist upon a further motion to compel its attendance during the pre-hearing procedures, it certainly knew that taking that position when there was no time available to challenge it in court would have the practical effect that it did.

[22] Lying in the weeds is a strategy, but it does not confer the right to spring out of them at will. I find the McCracken affidavit to be inadmissible and attach no weight to it.

(ii) *No weight can be attached to the CBR April 2021 Appraisal*

[23] The parties have very hotly debated the valuation evidence that is on the record before me. A portion of that valuation evidence has been sealed. My reason for doing so is straightforward: the approval of the Proposal cannot be taken for granted and it is thus

reasonably foreseeable that the project may have to be sold by a Trustee or Receiver in the near future and the ability of whichever court officer is charged with undertaking that sale to achieve the highest and best price available ought not to be impaired more than the circumstances already have by the disclosure of appraisals that may serve to skew market expectations. A significant portion of such evidence is part of the public record and between the public information and the use of carefully-framed circumlocutions I believe that I can convey my conclusions and reasons for them regarding the valuation evidence with reasonable clarity.

[24] Two of the appraisals before me, both from CBRE, are the most central to the questions I must determine. The first in time is dated August 8, 2019 providing CBRE's opinion of value as at July 30, 2019. This appraisal was prepared for the parent company of the debtors within the Cresford group and is based on the particular assumptions set out therein, including some supplied by Cresford. The second in time, also by CBRE, is dated April 30, 2021 as of March 16, 2021. This latter appraisal was prepared for Concord based on the assumptions set out therein, including some supplied by Concord. I shall not discuss in a public document the actual appraisal amounts in either, focusing instead on the differences between them.

[25] For present purposes, it is sufficient for me to observe that the 2021 CBRE appraisal is lower than the 2019 CBRE appraisal and lower by an amount that is significantly higher than the sum of the compromised amount of unsecured claims under the Proposal plus the total capital of the "B" unitholders in YG LP.

[26] I find that I can attach little weight to the 2021 CBRE appraisal in these circumstances because:

- a. The assumptions given to CBRE by Concord were materially different than those used in the 2019 CBRE appraisal including as to such things as leasable square footage of residential and retail space;
- b. When it formulated the instructions to CBRE, Concord was in the process of attempting to negotiate a Proposal to acquire the property through the bankruptcy process given lack of limited partner consents and was being commissioned at a time when Concord had a clear and obvious interest in having appraisal evidence suggesting that the project was at least partly underwater;
- c. The downward alterations made by Concord to the square footage assumptions used by CBRE are unexplained, untested and appear to be admitted as having been quite preliminary at all events;

- d. Concord did not submit Mr. McCracken to cross-examination to examine in depth the reasons for the significant negative difference between the two instructions given to CBRE on the conflicting appraisals;
- e. The differences between the two have not been reasonably or adequately reconciled. There has been no general downward correction to residential real estate in Toronto that has been brought to the court's attention nor can the difference between the two appraisals reasonably be attributed solely to pandemic-induced alterations to the retail environment.

(iii) *ALL Construction Lien Claims are Unaffected Creditors under the Proposal*

[27] Under the Proposal, Construction Lien Claims are defined as "Unaffected Creditors". The Trustee indicates that the total amount of such claims is \$11.865 million. Of this total, fifteen lien claimants with \$9.19 million in lien claims outstanding entered into assignment agreements with the Proposal Sponsor. As these are non-voting Unaffected Creditors under the Proposal, Concord required them to file claims as Affected Creditors in order to acquire the right to vote and to name a proxy designated by Concord.

[28] There was some controversy about what precisely the lien claimants received in return for agreeing to convert claims that were to be paid \$1.00 per \$1.00 of valid claims under the Proposal into claims receiving no more than \$0.58 per dollar of claim value. The Trustee-reported second-hand information from Concord denying any "side" deals does little to address this concern. Assurances as to the lack of a side deal do not serve the purpose of permitting a reasonable understanding of the main deal. None of them have been disclosed beyond a skeletal summary and Concord declined to permit a representative to be examined prior to the hearing.

[29] It is of course open to the Proposal Sponsor to make any proposal that satisfies the formal requirements of the BIA if the debtor is prepared to adopt it and submit it to the creditors and the creditors are willing to accept it with their eyes open. In this case however the Proposal Sponsor has induced \$9.19 million of otherwise Unaffected Creditors to file claims as something they are not by definition (i.e. Affected Creditors) thereby effectively reducing the size of the cap from \$65 million to \$55.8 million and the maximum pool of funds available to the actual Affected Creditors described by the Proposal from \$37.7 million to \$32.4 million. These are material changes impacting all Affected Creditors that follow from arrangements made by the Proposal Sponsor outside the terms of the Proposal.

[30] The Proposal makes no provision for creditors "downshifting" their claims voluntarily. Lien claims are defined as "Unaffected Claims" and I see no basis for them to be accepted under the Proposal on any other basis particularly where doing so operates to the obvious detriment of the affected class members. This is not a case of a

secured creditor valuing its security and filing an unsecured claim for the shortfall. There are consequences to such a valuation exercise that are absent here.

[31] The “electing” lien claimants have little in common with the actual Affected Creditors who had no election to make. Despite having made the election, assuming there was any basis in the Proposal to make such an election (and it appears to me that there was not), such creditors retained their security intact. Pursuant to art. 9.01 of the Proposal, the Proposal would have “no effect upon Unsecured Creditors” which definition does not cease to apply to them by virtue of a make-shift “election” for which the Proposal makes no provision. They did not agree to surrender their security nor even to value it in the bankruptcy process. They agreed to sell their claims on whatever terms they chose to accept from the Proposal Sponsor secure in the knowledge that if, for any reason, the Proposal does not move forward, their security remains intact and unaffected.

[32] This is an element of unfairness in this that I find particularly disturbing. It is all the more disturbing when I am not at all persuaded that the unsecured creditors face the spectre of near certain annihilation in the event of a bankruptcy or receivership but face the very real prospect of additional and illegitimate dilution of their claim value were I to approve the Proposal as presented with the presence of lien claimants in the Affected Creditor pool.

(iv) *The related party claims must be treated as equity*

[33] A fundamental principle of the BIA is that equity claims are subordinate to debt claims. This principle is voiced in s. 60(1.7) of the BIA that provides quite simply that “[n]o proposal that provides for the payment of an equity claim is to be approved by the court unless the proposal provides that all claims that are not equity claims are to be paid in full before the equity claim is to be paid”. Section 140.1 expresses a similar requirement in respect of dividends more generally. While there is some similarity behind the concept of “equity claims” in Canadian insolvency law and that of “equitable subordination” the two are separate and one and must not be confused with the other: *U.S. Steel Canada Inc. (Re)*, 2016 ONCA 662 (CanLII) at para. 101.

[34] The limited partner applicants submit that the intercompany advances appearing in the general ledger of YG LP should be treated as equity claims within the meaning of the BIA. The debtors on the other hand urge me to pass over this issue entirely arguing that approval of the proposal does not entail approval of any payment of intercompany claims. Such claims will ultimately be determined by the Trustee and if disallowed for any reason will receive no distribution.

[35] I cannot accept the debtors’ argument that I should sweep the equity claims under the carpet to be dealt with another day in another forum. This is so for the following reasons:

- a. The applicant limited partners have no standing to challenge the proof of the related party claims within the bankruptcy process even if their claims against related parties are not themselves released by the Proposal.
- b. On June 1, 2021 I directed that issues raised in the two applications would be dealt with on June 23. A theme in those applications was, among others, the allegation that the General Partner had been seeking to divert substantial payments to Cresford from various investor proposals negotiated by the Cresford group ahead of limited partners, the allegations that representations had been made in the Subscription Documents and elsewhere that Cresford entities would be paid out of distribution after the “A” unit limited partners, that counsel for Cresford had confirmed that the intercompany loans were subordinated to the limited partners, that the General Partner had acted in breach of its fiduciary duties and that the Proposal was not being advanced in good faith; and
- c. The timetable I approved on June 1 specifically contemplated the foregoing aspects of those applications being dealt with on June 23, 2021.

[36] If the related party claims are equity claims under the BIA, then it is also highly likely that the notional purchase price for the project being paid by the Proposal Sponsor under the Proposal must be viewed as being \$22 million less than it might otherwise appear, a fact that is also material to the matters I must consider on this motion.

[37] The allegations of the applicant limited partners in the two outstanding applications challenge the good faith with which the Proposal has been advanced by the General Partner in part on the theory that the Proposal has in fact been advanced to secure payment of the related party claims in priority to the “A” unitholders and without securing their consent.

[38] For the foregoing reasons, I cannot avoid a consideration of whether the related party claims are equity claims. My conclusions on that subject are an integral part of any conclusion I must make on the subject of good faith or the criteria to be considered under s. 59(2) of the BIA.

[39] Are the related party claims identified by the Trustee in this case “equity claims”?

[40] The BIA contains a definition of “equity claims” that is deliberately non-exhaustive. In *Sino-Forest Corporation (Re)*, 2012 ONCA 816 (CanLII) (at para. 44) the Court of Appeal found that the term should be given an expansive meaning to best secure the remedial intentions of Parliament.

[41] Subsequent cases have explored the concept of “equity claim” with a view to fleshing out its parameters. Some of the guidelines that can be distilled from that jurisprudence include the following:

- a. Neither the “intention of the parties” as between non-arm’s length parties nor the formal characterization they apply is conclusive as to the true nature of the transaction: *Tudor Sales Ltd. (Re)*, 2017 BCSC 119 (CanLII) at para. 35 and *Alberta Energy Regulator v Lexin Resources Ltd*, 2018 ABQB 590 (CanLII) at para. 37.
- b. The manner in which the transaction was implemented, and the economic reality of the surrounding circumstances must be examined to determine the true nature of the transaction with the form selected being merely the “point of departure” of the examination: *Lexin* at para. 37.
- c. It is helpful to consider whether the parties to the transaction had a subjective intent to repay principal or interest on the alleged loan from the cash flows of the alleged borrower and, if so, was that expectation reasonable: *Lexin* at para. 41.
- d. It is also helpful to consider the “list of factors” that courts have looked at in such cases – being careful not to apply them in a mechanical way or as a definitive checklist: *Lexin* at paras. 42-43.
- e. Among the factors to examine are:
 - i. the presence or absence of a fixed maturity date and schedule of payments (absence of such terms being a potential indicator of equity);
 - ii. the presence or absence of a fixed rate of interest and interest payments. Again, it is suggested that the absence of a fixed rate of interest and interest payments is a strong indication that the advances were capital contributions rather than loans;
 - iii. the source of repayments. If the expectation of repayment depends solely on the success of the borrower’s business, the cases suggest that the transaction has the appearance of a capital contribution;
 - iv. the security, if any, for advances; and
 - v. the extent to which the advances were used to acquire capital assets. The use of the advance to meet the daily operating needs for the corporation, rather than to purchase capital assets, is arguably indicative of bona fide indebtedness: *Lexin* at paras. 42-43.

[42] The related party claims may be broken down into different buckets for the purposes of this analysis. The first one consists of payments that were made to retire loans taken out for the specific purpose of financing equity interests in YG LP. This

involved loans used to buy out the \$15 million investment of a former limited partner, loans used to finance the Cresford group of companies' \$15 million equity investment in Class B units as well as interest paid on both of these loans some or all of which has been recorded as obligations of YG LP on its books.

[43] Clearly advances made or charged to YG LP for the direct or indirect purpose of financing the purchase of an equity interest in YG LP are likely to the point of certainly to be characterized as equity claims of YG LP for the purposes of insolvency law. The evidence to this point supports the reasonable inference that a very substantial portion of the advances charged to YG LP by non-arm's length parties can be so characterized.

[44] A second category of advances made can only be described as "miscellaneous" comprised of various sporadic payments made by members of the Cresford group of companies that were recorded in the ledger of the limited partnership net of other payments made by the limited partnership to the Cresford group.

[45] The terms of the intercompany advances recorded on the general ledger of the limited partnership share the following characteristics:

- a. They were all non-interest bearing without any defined term or maturity date; and
- b. There are no loan documents evidencing any of them.

[46] Such payments as there were from YG LP on account of these advances were sporadic. The nature of the YG LP project is such that there is no cash flow nor any expectation of cash flow being available to repay the intercompany advances recorded until project completion when deposits and sales proceeds become available. The evidence does not suggest that intercompany advances were primarily short-term bridge advances pending the receipt of project financing that was to be used to repay them.

[47] There is substantial evidence that the related party advances were intended to be subordinated to holders of "A" units of YG LP and are thus equity claims. In the interest of time, I shall only summarize this evidence:

- a. Direct written representations were made to the investors in YG LP "A" units as part of the subscription process that after payment of "project expenses" only "external lenders" debt would be repaid ahead of them and that distributions to "Cresford" – unambiguously referencing the group of companies rather than one entity – would come after repayment of invested capital and the agreed return on investment to the limited partner investors;
- b. Cresford's communications to the limited partners never disclosed the existence of any "debt" owed to Cresford even when portraying "current debt" in various discussions with or disclosures made to them until very

recently (and long after the advances in question were recorded on YG LP's books);

- c. Other Cresford group projects with similar capital structures also made representations that intercompany advances were treated as equity;
- d. There was a direct, written representations made by prior counsel to the General Partner in October 2020 that such intercompany advances were "subsequent in priority" to the YG LP "A" unit investors – that admission has since been retracted without an adequate explanation for why it was an alleged error; and
- e. Cresford's CFO also advised that the YG LP "A" unitholders would be paid in priority to "Cresford" a term used to describe the related group of Cresford companies under common control.

[48] A review of the foregoing factors in light of the jurisprudence leads me to the conclusion that the related party advances must be considered as equity claims for the purposes of this motion at least. Virtually all indicators reviewed point towards equity and there is little to no evidence leaning the other way.

(v) *The implied value of the Proposal is \$22 million less than assumed*

[49] The Proposal operates to reduce the payments made to unsecured creditors if claims are lower than the \$65 million cap. The converse is not the case. Absent the lien claims and the intercompany claims there is no mathematical prospect of the \$65 million cap being operative unless the contingent and late-filed claims are resolved at levels far in excess of any reasonable estimate. This means that the consideration paid by Concord under the Proposal must be considered to be worth \$22 million less than it might have been had the related party claims not been equity claims.

(vi) *The general partner had authority to file the NOI*

[50] The two groups of limited partners have raised three broad categories of objections to the capacity of the general partner to have filed the NOI and sought approval of the Revised Proposal: (i) as a matter of law, all partners including limited partners, must approve filing for bankruptcy; (ii) pursuant to the Limited Partnership Agreement, the general partner lacked the authority to file for bankruptcy; and (iii) the general partner ceased to be general partner prior to the filing. I shall consider each of these in turn.

S. 85(1) of the BIA

[51] Section 85(1) of the BIA provides that it "applies to limited partnerships in like manner as if limited partnerships were ordinary partnerships, and, on all the general

partners of a limited partnership becoming bankrupt, the property of the limited partnership vests in the trustee.”.

[52] The limited partners’ position was that since all partners of a general partnership must authorize a bankruptcy filing and since s. 85(1) of the BIA applies the law in relation to general partnerships to limited partnerships in “like manner”, it follows that an NOI must be authorized by all limited partners in addition to the general partner. In support of this interpretation they cite the case of *Aquaculture component Plant V Limited Partnership (Re)*, 1995 CanLII 9324 (NS SC) where two NOI’s filed on behalf of limited partnerships were annulled on this basis.

[53] While the decision of Hamilton J. in the *Aquaculture* case is entitled to deference, it is not binding upon me. I find that I am unable to agree with its reasoning.

[54] The *Aquaculture* case stands quite alone in the jurisprudence on this topic – alone in the sense that none appear to have followed or disagreed with it as far as the research conducted by the parties has been able to determine. In the 26 years since it was decided, a significant number of limited partnerships have passed through our bankruptcy courts either for proposals or liquidations without apparent objection on this score. That practice of course does not have the effect of altering the law but it is at least a factor to consider given the number of times since then that Parliament has examined the BIA including with the addition of s. 59(4) that authorized changes to the constating documents of a debtor including a limited partnership.

[55] I reach a different conclusion than was reached in *Aquaculture* for the following reasons:

- a. The use of general “in like manner” language in s. 85(1) of the BIA is intended to ensure that the provision is interpreted consistent with the objects of the BIA and not in a manner as to defeat those objects or render the benefits of the BIA largely inaccessible to limited partnerships. The procedure for filing an NOI was intended to offer debtors a swift and relatively low cost means of seeking creditor protection after a secured creditor gives the required ten-day notice of its intention to enforce. Requiring unanimous consent for filing of an NOI would have the practical effect of making the benefits of bankruptcy law unavailable to limited partnerships in practice in a large number of cases. Limited partnerships often have large numbers of limited partners and the time required to convene a meeting and obtain unanimous consent would require more time than secured creditors are required by law to give in the way of notice.
- b. Provincial law generally provides that only general partners may bind a limited partnership (in Manitoba, s. 54(1) of the *The Partnership Act*, CCSM c P30) and the BIA treats partnerships and limited partnerships as a full

“debtor”. The policy behind requiring all *general* partners to authorize a bankruptcy filing is obvious – all are liable without limit for the liabilities of the partnership. The same is not the case with a limited partnership.

- c. Section 59 of *The Partnership Act* also provides that actions or suits in relation to the limited partnership may be brought and conducted by and against the general partners as if there were no limited partners. This too supports the proposition that the consent of limited partners is not required for the filing of an NOI on behalf of the partnership.

[56] I find that s. 85(1) of the BIA did not require the asset of each limited partner to the filing of an NOI.

[57] The limited partners also pointed to provisions of the Limited Partnership Agreement to allege that the General Partner had automatically ceased to be general partner of the partnership by reason of certain actions or that that it lacked the authority to file on behalf of the partnership.

Did the General Partner cease to be a general partner of YG LP at any time?

[58] The Proposal Sponsor Agreement is dated April 30, 2021 and was entered into between Concord as Proposal Sponsor and YG LP acting through the General Partner. It was executed prior to filing the NOI but *after* the two limited partner groups had filed their separate applications seeking, among other things, to remove the General Partner. To the extent it is relevant, there can be no question but that Concord was aware of the terms of the Limited Partnership Agreement at all relevant times when negotiating and entering into the Proposal Sponsor Agreement.

[59] Pursuant to s. 1.1 of the Proposal Sponsor Agreement, YG LP agreed to “use commercially reasonable efforts to effect a financial restructuring of [YG LP] that will result in the acquisition of the Property by the Proposal Sponsor together with [YG LP’s] rights, title and interests in and to such Project-related contracts as may be stipulated”. A draft of a proposal, substantially similar to the Proposal before this court for approval, was appended as a schedule to the Proposal Sponsor Agreement. The agreement was signed by Mr. Daniel Casey on behalf of each of the Cresford companies named as parties including YG LP.

[60] Section 10.14 of the YG LP Limited Partnership Agreement provides that “None of the following actions shall be taken unless it has *first* been approved by Special Resolution: (a) approving or disapproving the sale or exchange of all or substantially all of the business or assets of the Partnership”(emphasis added).

[61] The Proposal contemplated by the Proposal Sponsor Agreement clearly provides for the sale or exchange of all or substantially all of the business or assets of the Partnership. Section 1.1 of the Proposal Sponsor Agreement obliged YG LP to “use

commercially reasonable efforts” to cause this to occur, including by filing the NOI and to requesting court approval of the Proposal. As obliged by the Proposal Sponsor Agreement, YG LP filed an NOI, filed the Proposal and subsequently sought court approval of the Proposal.

[62] Entering into the Proposal Sponsor Agreement constituted the “approval” of YG LP to the sale or exchange of all or substantially all of the business or assets of the Partnership” even if approvals of other parties were also required in order to *complete* the transaction. The prohibition in art. 10.14(a) attaches to the approval of the action and not its completion.

[63] Section 7.1(c) of the Limited Partnership Agreement creates an Event of Default if the General Partner “becomes insolvent ... consents to or acquiesces in the benefit of [the BIA]”. By filing the NOI as a general partner of YG LP, the General Partner necessarily admitted to being insolvent at the time the NOI was filled out. There is no evidence that such state of insolvency arrived suddenly that day. The General Partner has accordingly admitted to the existence of an insolvency default under s. 7.1(c) of the Limited Partnership Agreement at some time prior to filing the NOI failing which no NOI would have been possible. By signing the Proposal Sponsor Agreement and agreeing to file the NOI to advance the Proposal, the General Partner also consented to the receiving the benefit of the BIA proposal provisions.

[64] For all of the foregoing reasons, the signing of the Proposal Sponsor Agreement amounts to an admission of further breaches of the Limited Partnership Agreement.

[65] Do such breaches entail the automatic removal of the authority of the General Partner to act as such at the time the NOI was actually filed? The answer in my view is that none of them have that effect.

[66] Section 11.2 of the Limited Partnership Agreement concerns the removal of the General Partner. Pursuant to s. 11.2(a), the General Partner “may be removed” by a court of competent jurisdiction on certain named grounds. That has not occurred. Section 11.2(b) provides that the General Partner “shall cease to be general partner” if any of the named events occurs. None of the agreement to file an NOI, the state of being insolvent or the signing of the Proposal Sponsor Agreement can be read to be included in the list of events listed in s. 11.2(b). The *aftermath* of the filing of the NOI may well be such a trigger but the answer to that question would require me to contend with the effects of the automatic stay which has not been raised before me.

[67] Accordingly, I find that the NOI filed by the General Partner was not void or subject to any similar infirmity. The foregoing conclusion refers only to the actual filing of the NOI and specifically does not apply to the breaches of the Limited Partnership Agreement consequent upon entering into the Proposal Sponsorship Agreement discussed above.

(vii) *The Proposal was the product of a flawed process and breaches of fiduciary duty by the General Partner*

[68] There are two aspects to this part of the objections raised by the objecting limited partners. First, it is alleged that during the year leading up to the Proposal Sponsor Agreement, the General Partner breached its fiduciary duty to act in the best interests of the partnership by seeking to advance the interests of non-arm's length parties to the detriment of the limited partners while simultaneously frustrating every effort of the limited partners to access the information that the Limited Partnership Agreement and the Manitoba *Partnership Act* gave them the rights to see. Second, it is alleged that negotiating and entering into the Proposal Sponsor Agreement was a breach of fiduciary duties of the General Partner in that this was nothing less than deliberately negotiating and entering into an agreement to breach the Limited Partnership Agreement.

[69] As the sole general partner of YG LP, the General Partner was responsible for the management of the affairs of the limited partnership and was the only one able to bind the partnership. The General Partner owed a fiduciary duty to all of the partners of the firm in discharging that role and pursuant to s. 64 of *The Partnership Act*, is liable to account, both at law and in equity to the limited partners for its management of the firm.

[70] As I have outlined above, entering into the Proposal Sponsor Agreement was a clear violation of s. 10.14 of the Limited Partnership Agreement as it agreed to a process whereby substantially all of the property of the firm would be conveyed to a third party without the assent of the limited partners. The fact that the BIA stay of proceeding may impede or prevent the limited partners from seeking a direct remedy for that breach when the agreement was subsequently put into action by filing the NOI does not detract from the existence of a present breach the moment pen was put to paper. Further, whether the negotiations of the Proposal Sponsor Agreement consumed two weeks or two months, it was a breach of fiduciary duty to plan and then put into execution a deliberate breach of the Limited Partnership Agreement and doing so in the teeth of a pending application to stop the General Partner adds further weight to that conclusion.

[71] The debtors suggested that being in the proximity of insolvency dissolved or altered the fiduciary duties of the general partner owed to the limited partners. It is true that the law recognizes that the interests of creditors assume a greater weight the closer to insolvency the enterprise approaches. None of this dissolves the fiduciary obligations of the General Partner so much as it adds to them. It is at this point that the other aspect of the complaint of the limited partners enters the analysis.

[72] Nothing in what I have written suggests that a general partner cannot file an NOI where doing so appears on all of the facts and in the good faith exercise of the best business judgment of the general partner to be in the best interests of the enterprise as a whole to do so – a judgment that necessarily accounts for the obligations of the firm owed to its creditors.

[73] This filing was different because it came with strings attached: a binding Proposal Sponsor Agreement that granted exclusivity to a single party and obliged the General Partner to pursue one path and one path only to emerge from the process. Those strings did not get attached as a result of a process which itself discharged faithfully the fiduciary duties of the General Partner. Rather they were attached as the culmination of almost a year of battling to keep information away from limited partners that they had a right to access (in most cases at least) and the squandering of an expensively purchased window of restructuring breathing room looking not for the solution best able to discharge all of the obligations of the partnership but rather looking for the investor best able to secure the optimal outcome for the Cresford group of companies generally. In that process the limited partners were an obstacle to be circumvented and bankruptcy provided a possible key.

[74] Good faith in such circumstances is not assumed but must be shown. The evidence presented to me has rather persuasively convinced me that good faith took a back seat to self-interest.

[75] The parties have expended considerable effort in outlining the details of what occurred in that time frame. In the interests of time, I shall summarize the important take-aways from those events:

- a. Until the Proposal Sponsor Agreement and the April 2021 CBRE report prepared for Concord, *all* appraisal evidence showed a profitable project likely to result in full coverage for all of the outstanding third-party debt obligations plus all of the obligations owed to limited partners;
- b. The General Partner presented two potential transactions to the “A” unit limited partners in the second half of 2020 that provided for the full payment of all debt, the payment of approximately \$38 million to non-arm’s length parties related to the General Partner and payment of obligations owed to the limited partners at a discount – the latter of the two proposals emanated from Concord;
- c. The two proposals failed to proceed primarily because the General Partner was unable to provide a satisfactory explanation as to why Cresford related parties were to receive a substantial payment when limited partners were asked to accept a compromise the obligations due to them and limited partners had been assured that Cresford group obligations ranked behind them both when they made their investment and as late as October 2020 in a letter from counsel the debtors; and
- d. The limited partners were in a continual tug-of-war trying to pry information out of the General Partner having had to resort to a court order at the

beginning of this year to obtain access to information that should have been available to them as of right.

[76] Few things are more precious in the restructuring business than time. YG LP was able to “purchase” more than a year of time with the forbearance arrangements that it worked out. That precious time appears to have been devoted solely to finding transactions that offered the greatest level of benefits for the Cresford group of companies. There is no evidence that any canvassing of the market – however constrained the market of developers capable of undertaking the completion of an 85-story mixed use tower in downtown Toronto may be – took place that was not indelibly tainted by the imperative of finding value for the Cresford group of companies rather than for the partnership itself.

(viii) The Affected Creditor vote was unanimous

[77] Despite the fact that I have found that fifteen of the forty-six votes cast in favour of the Proposal ought not to have been considered because they came from Unaffected Creditors, that determination does not impact the conclusion of the Trustee that the required statutory majorities voted in favour of the Proposal. There was but one negative vote cast and the Trustee disallowed that vote as being contingent. I have reviewed the Trustee’s reasons for so ruling and find no fault with them. The removal of fifteen creditors and just over \$9 million in claims does not detract from the fact that thirty-one creditors holding approximately \$9 million in other claims cast votes in favour.

[78] While I am prepared to consider to some degree the impact of the assignment agreements negotiated by Concord (see below), I do not view such agreements as impacting the formal validity of the votes cast.

[79] I find that the Proposal received the required majority of two-thirds in value and over 50% in number of creditors voting in person or by proxy.

(ix) The probative value of most of the Affected Creditor vote is attenuated

[80] In the normal course, the agreement of a broad group of creditors to accept less than 100% of what they are owed is cogent evidence of the fairness and reasonable nature of a proposal. This is so as a matter of common sense and by a very long tradition in our law. It is not an indicator lightly to be ignored.

[81] I must also recognize that whatever doubts the evidence may raise as to the insolvency of the debtors in terms of the realizable value of their assets, there can be little doubt that the liquidity test for insolvency is met. The lien claimants have been unpaid for a year or more without any formal forbearance agreement. The first mortgagee has entered into a forbearance agreements but this expires on June 30, 2021.

[82] There was a window of time to find an out-of-court solution, but it would appear that the debtors have squandered it.

[83] The vote of the Affected Creditors *is* probative of fairness, but I find that its weight is attenuated in this case by the following circumstances:

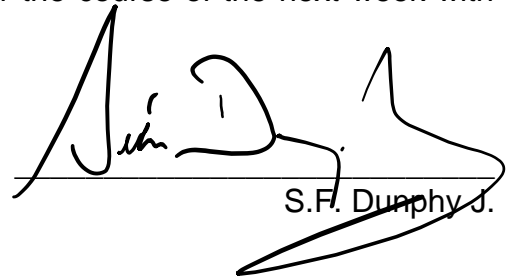
- a. Only a relatively small minority voted who did not also enter into assignment agreements;
- b. The evidence is equivocal about precisely what consideration was received by those who entered into such assignment agreements – a relayed denial of “side-deals” without more adds little to the equation particularly when the deal itself is not disclosed;
- c. Clearly if assigning creditors received or stand to receive more than the value allocated to them under the Proposal, their positive vote says little about the business judgment of the creditors at large to accept the value offered to satisfy their claims but says more about the willingness of the Proposal Sponsor to pay more than has been reflected in the Proposal itself.
- d. This last-in-line class of creditors did not have available to it the range of information produced in connection with this approval motion.

Disposition

[84] I will not approve the Proposal in its present form. I have concluded that, as presented, the Proposal is not reasonable, it is not calculated to benefit the general body of creditors and there are serious issues regarding the good faith with which it has been prepared and presented by the debtors. The debtors and the Proposal Sponsor have the authority under art. 3.06 of the Proposal to amend the Proposal to address the concerns I have raised. It is up to them – with the approval of the Trustee – to do so if they are so inclined.

[85] I am directing the parties to return on Wednesday June 30 at 2:15 pm either to propose amendments to the Proposal that address the concerns I have raised in a substantive way or to address next steps.

[86] These written reasons expand upon the summary reasons I presented orally in a hearing on June 29, 2021. I have released these reasons with relatively little opportunity to proof them and correct typographical errors or minor nits or stylistic glitches. I shall do so over the next week when I have more time available to me and the capacity to call upon my able assistant Ms. Daisy Ng to assist in that effort. Accordingly, I shall be releasing an amended version of these reasons over the course of the next week with such minor and non-substantive corrections.



S.F. Dunphy J.

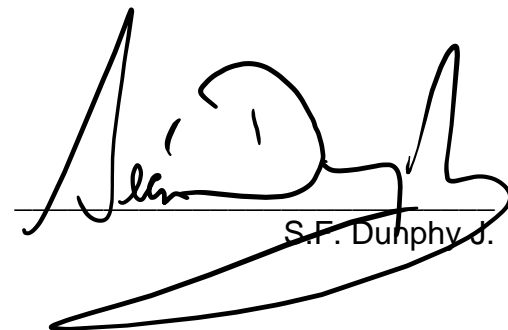
Date: June 29, 2021

The foregoing is the corrected text of my reasons. Orphaned words have been removed or obvious missing words restored along with corrections of minor errors only. The parties have received a blackline version to compare the changes. Since releasing these reasons, I have adjourned the hearing scheduled for June 30, 2021 at 2:15 until July 9, 2021 at 10:00am. In so doing, I issued the following additional directions:

As KSV Restructuring Inc. (“KSV”) will become the bankruptcy trustee and court-appointed receiver on July 9, 2021 if no satisfactory amended proposal is approved at that time, this Court hereby authorizes and directs KSV to undertake the steps towards formulating a sales process that it would be undertaking if it had been appointed the receiver today.

KSV’s costs of doing so from July 1, 2021 shall be deemed costs of the receiver upon the granting of a receivership order on July 9, 2021 failing which all such costs will be deemed to be costs of the Proposal Trustee in the proposal proceeding.

Issued: July 2, 2021



S.F. Dunphy J.

Appendix “B”

CITATION: YG Limited Partnership and YSL Residences (Re), 2021 ONSC 5206
COURT FILE NOS.: CV-21-00655373-00CL/BK-21-02734090-0031,
CV-21-00661386-00CL & CV-21-00661530-00CL
DATE: 20210716

**SUPERIOR COURT OF JUSTICE – ONTARIO
(COMMERCIAL LIST)**

RE: IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, C. B-3, AS AMENDED

AND:

IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A
PROPOSAL OF YG LIMITED PARTNERSHIP AND YSL RESIDENCES

APPLICATION UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, C. B-3, AS AMENDED

AND RE: 2504670 CANADA INC., 8451761 CANADA INC. and CHI LONG INC.,
Applicants

AND

CRESFORD CAPITAL CORPORATION, YSL RESIDENCES INC,
9615334 CANADA INC., YG LIMITED PARTNERSHIP and DANIEL
CASEY, Respondents

AND RE: 2583019 ONTARIO INCORPORATED AS GENERAL PARTNER OF
YONGESL INVESTMENT LIMITED PARTNERSHIP, 2124093 ONTARIO
INC., SIXONE INVESTMENT LTD., E&B INVESTMENT CORPORATION
and TAIHE INTERNATIONAL GROUP INC., Applicants

AND

9615334 CANADA INC. AS GENERAL PARTNER OF YG LIMITED
PARTNERSHIP and YSL RESIDENCES INC., Respondents

BEFORE: S.F. Dunphy J.

COUNSEL: *Harry Fogul and Miranda Spence*, for YG Limited Partnership and YSL
Residences Inc.

Shaun Laubman and Sapna Thakker, for 2504670 Canada Inc., 8451761
Canada Inc., and Chi Long Inc.

Alexander Soutter, for YongeSL Investment Limited Partnership, 2124093 Ontario Inc., SixOne Investment Ltd., E&B Investment Corporation, and TaiHe International Group Inc.

David Gruber, Jesse Mighton, and Benjamin Reedijk, for Concord Properties Developments Corp. and its affiliates

Jane Dietrich and Michael Wunder, for 2292912 Ontario Inc. and Timbercreek Mortgage Servicing Inc.

Robin B. Schwill, for KSV Restructuring Inc. in its capacity as the proposal trustee

Roger Gillot and Justin Kanji, for Kohn Pedersen Fox Associates PC

Reuben S. Botnick, for Royal Excavating & Grading Limited COB as Michael Bros. Excavation

Jamie Gibson, for Sarven Cicekian, Mike Catsiliras, Ryan Millar and Marco Mancuso

Brendan Bowles, for GFL Infrastructure Group Inc.

Mark Dunn, for Maria Athanasoulis

James MacLellan and Jonathan Rosenstein, for Westmount Guarantee Services Inc.

Albert Engle, for Priestly Demolition Inc.

HEARD at Toronto: July 9 and 16, 2021

REASONS FOR DECISION #2 (REVISED PROPOSAL)

[1] On June 29, 2021, I rejected the debtor's application for approval of its Proposal (identified as "Amended Proposal #2) and provided my detailed reasons for doing so on July 2, 2021. In delivering my reasons, I indicated that that it remained possible for the debtors to amend their Proposal if they so chose. The debtors for their part asked me to adjourn the hearing until July 9, 2021 in order to permit them an opportunity to do so. I granted the requested adjournment.

[2] An amended proposal was filed immediately prior to the hearing on July 9, 2021 entitled "Amended Proposal #3" and I have been asked to consider approving such Amended Proposal. I held a hearing on whether Amended Proposal #3 ought to be approved on July 9, 2021. Amended Proposal #3 was filed only a short while prior to that

hearing. I delayed the start of the hearing for an hour to give parties time to review and analyse the document and proceeded to hear their submissions.

[3] As is usual, I called upon the Trustee to give its comments last. The Trustee requested a further week to review the document and to consider its position. I granted that request and the matter was adjourned to July 16, 2021 at 10:00 a.m. This second adjournment was granted – it must be noted – over the objections of the 1st mortgagee Timbercreek whose forbearance agreement with the debtors expired on June 30, 2021 and who has a long-standing hearing date for its receivership application on July 12, 2021. I adjourned the Timbercreek July 12, 2021 hearing to July 16, 2021 as well such that both proceedings were scheduled to appear before me on July 16, 2021.

[4] A term of the adjournment I granted was that the debtors and Timbercreek should both have circulated draft orders (Proposal approval order in the case of the debtors; Receivership Order in the case of Timbercreek) in advance of the hearing on July 16, 2021 with the expectation that I should sign one of the two orders on July 16, 2021.

[5] On July 15, 2021, a second version of Amended Proposal #3 was filed with the Official Receiver and the Trustee issued its Fourth Report commenting on version 2 of Amended Proposal #3. The Trustee's Fourth Report recommended approval of the Proposal as so amended.

[6] This Proposal has been through a few versions and the nomenclature can get confusing. The amendments made in version 2 of Amended Proposal #3 were minor and technical in nature – they did not adversely affect the rights of any Affected Creditor and at least one of them could just as easily have been added to the approval order outside of the Proposal without objection. My references to "Amended Proposal #3" below should be taken as referencing version 2 of Amended Proposal #3 unless the context requires otherwise.

[7] For the reasons that follow, I have decided to approve version 2 of Amended Proposal #3 and I have signed the approval order.

Background facts

[8] I shall not repeat my review of the facts nor my reasons for rejecting Amended Proposal #2 on June 29, 2021. My detailed reasons for that decision were released on July 2, 2021 and should be considered as if incorporated by reference herein.

[9] In broad strokes, the following summarizes the principal amendments made in Amended Proposal #3:

- a. Lien claimants who assigned their claims to the Proposal Sponsor (\$9.2 million) will not share in the pool of cash available to unsecured creditors under the Proposal – all lien claimants will be treated as Unaffected Creditors;

- b. Related party claims (\$38.3 million) will be treated as equity claims and not participate in the pool of cash available to unsecured creditors;
- c. Unsecured creditors' recoveries will no longer be limited to \$0.58 per dollar of proven claim but will share *pro rata* in the pool of cash available to unsecured creditors up to payment in full;
- d. The Proposal Sponsor will fund the full cash pool on Proposal Implementation without reduction should proven claims come in below the amount of the cash pool (\$30.9 million);
- e. The pool of cash available to unsecured creditors is reduced from \$37.7 million to \$30.9 million but subject to the above changes reducing the claims eligible to share in the pool;
- f. Secured creditors claims – including all construction lien claims – remain unaffected and are assumed by the Proposal Sponsor in purchasing the land and project assets;
- g. After Affected Creditor claims have been resolved and all required payments made to them, any residual amount will be returned to the debtor YG Limited Partnership to be dealt with as the partners direct or the court orders; and
- h. Proposal Implementation will occur three days after court approval.

[10] The Fourth Report of the Trustee summarized the impact of these changes. Some of the principal points made by the Trustee include the following:

- a. Construction lien claimants who agreed to assign their claims to the Proposal Sponsor prior to these amendments might potentially receive less under their assignment agreements than they would under Amended Proposal #3 which had not been made when they agreed to assign their claims. The Trustee contacted the assigning creditors. Two were unable to be contacted but have voiced no objection one way or the other. The remainder of them expressed support for the approval of Amended Proposal #3 or made no objection to it. No assigning creditor was opposed.
- b. Version 2 of Amended Proposal #3 contains material improvements to Amended Proposal #2 and addresses concerns raised in my decision of June 29, 2021.
- c. Any payments to equity holders are entirely outside of the Proposal.
- d. The Trustee has analyzed the known unsecured claims that would share in the \$30.9 million pool available to Affected Creditors under Amended Proposal #3. The Trustee's estimate is that Affected Creditors will receive

between 71% of their claims and payment in full under version 2 of Amended Proposal #3 as contrasted with between 40% and 58% of their claims under Amended Proposal #2. The lower assumption is based on all known claims being allowed in full as claimed with an identical estimate for claims not yet filed. In the event none of the disputed or contingent claims were allowed, the Affected Creditors would be paid in full and up to \$19 million may be available to holders of equity claims.

[11] Amended Proposal #3 came with an additional element that the Proposal Sponsor felt it proper to disclose to the Court and the parties. The Proposal Sponsor made a parallel and entirely voluntary offer to holders of limited partnership units in YG LP as well as other claims found by me to be equity claims (i.e. the related party claims) to sell their equity interests for 12.5% of the value of such interests subject to certain structuring conditions.

[12] I cannot say at this juncture whether any equity holders will take the Plan Sponsor up on this offer. The objecting limited partners have shown little interest in it to date at least. The offer has conditions that may or may not be acceptable to them depending upon their own tax situation and their views of value.

[13] Fifty years after the Carter Commission report, it remains the case that business transactions are invariably structured to minimize tax which continues to impact similar economic transactions differently depending upon the structures used. I am satisfied that the “equity offer” is not a disguised transfer of value from creditors to holders of equity claims – the structures required to be used potentially deliver tax attributes to a buyer of the claims that would not otherwise be available. This proposal has been properly disclosed but I do not view it as being particularly relevant to my assessment of Amended Proposal #3. That proposal delivers additional value to creditors under all scenarios compared to its predecessor. There is no diversion of value from creditors to equity holders to be found here. I concur with the Trustee’s assessment that the equity offer is quite independent of the Proposal and does not contravene the *BIA* provisions against payment to equity ahead of debt even if it turns out that creditors receive less than payment in full (and that would be a fairly speculative assumption to make).

[14] The Trustee’s Fourth Report concluded that the Debtors were proceeding with the request for approval of the Amended Proposal #3 in good faith.

Analysis and discussion

[15] This amended proposal is not perfect. The process that led to it was far from ideal. However, as now amended, this Proposal provides a superior outcome for all classes of creditors under every conceivable scenario and addresses all of the concerns raised in my reasons of July 2, 2021 constructively and substantively.

[16] As so amended, I have no hesitation in finding that Amended Proposal #3 is reasonable, it is calculated to benefit the general body of creditors and is being advanced

at this juncture in good faith notwithstanding the defects that I found marred the negotiation and presentation of the initial version of the Proposal.

[17] There were some critical foundational findings that I made in my reasons of July 2, 2021 including:

- a. whatever breaches of the Limited Partnership Agreement may have occurred in the weeks and months prior to the filing of the NOI, the general partner *did* have authority to file the NOI;
- b. the Affected Creditor vote in support of Amended Proposal #2 was in fact unanimous; and
- c. whatever questions there may be regarding the solvency of the debtors from the perspective of the realizable value of their assets, there can be no question of the insolvency of the debtors from a liquidity point of view: secured and unsecured claims alike are overdue and unpaid and the debtors have no means to satisfy their claims in a timely way. Lien claims are more than a year in arrears for the most part while all forbearance periods have expired for the secured debt.

[18] While I found the probative value of the creditor vote to be attenuated somewhat by the factors I listed in those reasons, the vote did and does have probative value and it is material to note that unsecured creditors agreed to accept payment of less than full payment on their claims on June 15, 2021. All of the Affected Creditors will receive a superior outcome under Version 2 of Amended Proposal #3 under any reasonable assumptions. Their approval of the prior version of the Proposal remains as probative in the context of version 2 of Amended Proposal #3 if not more so.

[19] Version 2 of Amended Proposal #3 clearly satisfies the technical requirements of the *BIA* in that Amended Proposal #2 upon which the creditors did vote authorized the amendments that have been made in Amended Proposal #3 (including version 2 thereof).

[20] Version 2 of Amended Proposal #3 has constructively addressed each of the issues I raised in my June 29 ruling and my July 2 written reasons:

- a. The construction lien claims will not dilute the recovery of the unsecured creditors in any way.
- b. The related party claims are to be treated as equity claims and disentitled to share in the cash pool.
- c. While I expressed grave concerns regarding the lack of good faith and the breaches of fiduciary duty that preceded the filing of the NOI and the entry into the Proposal Sponsor Agreement, those concerns were primarily focused on the efforts made to prefer related party claims over those of other stakeholders in the search for an investor. Amended Proposal #3

cannot undo the past of course but it has addressed those findings constructively. The related party claims are treated as equity claims.

- d. There is a strong likelihood that proven creditor claims will be substantially lower than the \$30.9 million pool available to satisfy them and Amended Proposal #3 ensures that such surplus is returned to the limited partnership instead of being retained by the Proposal Sponsor.
- e. The claims of related parties and their priority relative to limited partners will be dealt with within the limited partnership structure itself, in broad daylight and subject to the full range of remedies open to the limited partners to protect their interests should the need arise. The conflicting interests that marred the development of Amended Proposal #2 have been substantially cured by the amendments effected by Amended Proposal #3. Related parties have been put in their proper place in the claims hierarchy.

[21] The strongest critique levelled at Amended Proposal #3 by the limited partners is that it does not answer the question of what the value of the project might have been had the project been offered on the open market in a competitive process. That is a fair criticism but not one that is sufficient to detract from the overwhelmingly positive attributes of this Proposal.

[22] The past cannot be undone and perfection is not the standard against which a proposal is to be measured. Section 59(2) of the *BIA* requires that approval of a proposal must be refused if its terms are not shown to be reasonable and calculated to benefit the general body of creditors. The common law has added to this the requirement that a proposal must be advanced in good faith.

[23] Amended Proposal #3 is both reasonable and calculated to benefit the general body of creditors. It provides for substantially improved outcomes to all creditors whose claims were impaired by Amended Proposal #2 under any reasonable assessment of the facts. As noted above, it is quite likely that a surplus will remain to be returned to the limited partnership after all affected unsecured claims have been paid in full to be dealt with as the limited partners direct (or by court order if necessary).

[24] The debtors are insolvent today. They are properly in bankruptcy proceedings. Their creditors have a right to payment and – to the extent reasonably possible – to payment in full as soon as possible. Amended Proposal #3 offers payment in full to most secured creditors within a matter of days following court approval. Unsecured creditor payments will be subject to reasonable reserves for unresolved claims but these too will begin flowing in short order. This contrasts to a delay of *many* months on the most optimistic of scenarios were a receiver directed to sell the project.

[25] There is a public interest in moving this very substantial project out of the quicksand in which it has become stuck for over a year. Approval of Amended Proposal #3 at this juncture ensures that the Project is in the hands of a solvent entity

with the wherewithal and experience necessary to put it back on track as soon as possible.

[26] The real question before me today is whether limited partners have the right to require creditors to run the risk of a sale process producing an inferior outcome to Amended Proposal #3 in order to test the hypothesis that a greater value might emerge from a fresh marketing of the project in a liquidation process that might result in payment of some or all of the limited partners' equity claims. In my view, they do not.

[27] It is possible that higher values could emerge from a liquidation process but that possibility is not a one way street. The dissatisfaction I expressed in my reasons of July 2, 2021 regarding the quality of the appraisal evidence before me does not imply any level of probability that market value today is *higher* than the values suggested by the April 2021 CBRE appraisal. I was dissatisfied with the quality of *all* of the appraisal evidence because of the lack of evidence reconciling the differences between them and, in particular, assessing the reasonableness of the assumptions made in each.

[28] It is noteworthy that version 2 of Amended Proposal #3 offers the real prospect that a return on equity of more than 100% of the invested capital of the limited partners may come back to YG LP. The limited partners assent will be needed to any use of those funds unless a court order is obtained. The possible upside to limited partners arising from a new sales process has thus become that much more remote under this last revision to the Proposal compared to the first.

[29] There are costs involved in conducting a receivership that would come ahead of any potential surplus being made available to equity claimants such as the limited partners. Some of the risk of a sale process producing a lower outcome could potentially be insured against by procuring a stalking horse bid to put a floor under the sale process. There is no guarantee that a stalking horse bid would be available at or near the implied value of Amended Proposal #3. Stalking horse bids come with a price tag in the form of a break fee that is usually calculated as a percentage of the price. That too would stand to reduce the recoveries to unsecured creditors and create an additional hurdle to any prospect of additional recovery to limited partners.

[30] This is a real bankruptcy. There is nothing artificial about it. Creditors have been unpaid for over a year. I have before me a transaction that provides a pathway to payment of creditor claims in full and quickly while leaving a realistic prospect for equity claims to receive some significant recovery. Every other option requires the creditors – who bear no responsibility for the mess that this project has found itself in – being subjected to the real risk of partial non-payment and substantial delay being added to the very lengthy delay to which they have already been subjected in order to test the hypothesis that a few percentage points of additional value might potentially be found. That is not a risk that it is fair to impose on creditors on these facts and having regard to the important favourable changes made to the Proposal.

Disposition

[31] Accordingly, an order shall issue approving version 2 of Amended Proposal #3. I have reviewed the draft form of approval order uploaded and approved and signed same. It was amended slightly to include in the preamble corrected references to the limited partners who appeared and the evidence they filed.

[32] This Proposal satisfies the technical requirements of the *BIA*. I have concluded that version 2 of Amended Proposal #3 represents a valid amendment to Amended Proposal #2 in accordance with its terms and thus has received the required double majority of creditor approval. The terms of this Proposal are reasonable and calculated to benefit the general body of creditors. The amendments presented have satisfied the concerns raised by me regarding the good faith of the debtors in pursuing *this* Proposal.

[33] I wish in particular to note that I have included, as requested, an order pursuant to s. 195 of the *BIA* permitting provisional execution of the approval order notwithstanding appeal. I have made this order in consideration of two primary factors:

- a. The secured creditors of YG LP have been deferred and stayed for a very, very long time at this point. Some of that deferral was purchased in the form of forbearance agreements with Timbercreek but the last negotiated extension – an extension that included every possible assurance that no further extensions would be sought – expired on June 30, 2021. I made it clear on July 9, 2021 that I would be approving the Proposal or a Receiver today. It would be unjust to Timbercreek to have its period of limbo indefinitely extended by the simple expedient of filing a Notice of Appeal and forcing Timbercreek to seek a lifting of an automatic stay to enforce its security. This project is, at its core, a hard asset consisting of real estate, a bundle of approvals and a hole in the ground. There is no goodwill to speak of. It has been held in limbo for much more than a year at this point and it must either be put in the hands of someone who will bring it forward to completion under the Proposal or of a Receiver who will find someone who can.
- b. Our courts have generally sought to achieve a degree of uniformity of practice as between the CCAA and the *BIA*. Approval of a CCAA Plan is not subject to an automatic stay. An automatic stay in this case would operate as a functional veto of the Proposal itself because the result would be an almost certain slide into receivership unless the stay were promptly lifted.

[34] Timbercreek's receivership application was adjourned by me from July 12, 2016 until today. Based upon my approval of the Proposal today *and subject to the closing of version 2 of Proposal #3 in accordance with its terms by no later than July 31, 2021*, Timbercreek agrees that its application is moot. There is no reason to believe the Proposal will not be completed as planned, however, nothing can be taken for granted. I

am adjourning Timbercreek's application to August 9, 2021 when I shall next be sitting. It is adjourned before me.

[35] Assuming (i) the Trustee confirms to me that the version 2 of Amended Proposal #3 has been completed and (ii) Timbercreek does not advise me in advance of August 9 of its intention to proceed, I shall endorse the Timbercreek application as withdrawn without costs on August 9, 2021. No attendances will be necessary from any party in that eventuality. If there is a reason for the application to move forward, I am relying on the Trustee and Timbercreek to so notify me as soon as practicable after July 31, 2021.

[36] A request was made by the limited partners to make submissions to me regarding costs of the bankruptcy proposal proceeding. For the avoidance of doubt, my signing of the order approving version 2 of Amended Proposal #3 has not disposed of the matter of costs of the proposal proceedings. I have made no order as to costs to this point nor have I heard submissions on the point.

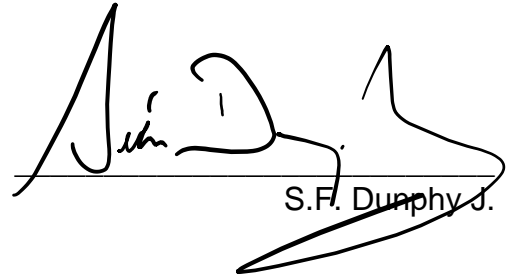
[37] Any party seeking an order of costs in their favour shall have ten days from today to file written submissions and an outline of costs. Submissions should not exceed ten pages excluding the outline of costs. Cases need not be included beyond a hyperlinked table of cases. The Debtors and the Proposal Sponsor shall each have a further ten days to respond to any such requests for costs with similar size restrictions. All submissions are to be uploaded to CaseLines and copied to the Trustee. I am asking the Trustee to provide me with a consolidated set of submissions to which the Trustee may – but shall not be required to – add its own additional comments in the form of a brief supplementary report.

[38] Lastly, I need to give some directions regarding the two civil applications that immediately preceded these bankruptcy proceedings brought by the limited partners of YG LP. My reasons of June 29, 2021 made a number of findings in relation to matters raised in those two applications. However, it must also be clear that neither my ruling of June 29, 2021 nor this decision has fully disposed of either civil application.

[39] It is certainly true that I made findings in the context of the bankruptcy proposal proceedings that were and are relevant to the two applications. Even if those findings were made in the context of the bankruptcy proceedings, the three proceedings were to a degree inextricably intertwined. I was asked to issue a formal order in relation to the findings I did make. I declined to do so not because I am resiling from any findings made – I do not – but because I did not and do not have the full scope of the claims of either application fleshed out before me. I directed certain matters to be explored and argued due to the interrelationship between the proceedings but I do not want my rulings in one context to be taken out of context in another.

[40] The safest course in my view is to let my rulings stand as made knowing that *res judicata* and issue estoppel can be applied as needed to avoid any abuse. I was asked to confirm – and do so now – that costs of those two civil applications have not been dealt

with by me at all. They have not. The limited partner applicants in those two proceedings asked to make submissions regarding costs of the bankruptcy proposal proceeding and I have given them leave to do so as provided above. The costs of the two civil applications remain reserved to the judge disposing of them.



S.F. Dunphy J.

Date: July 16, 2021

Addendum:

As noted, I have reviewed the originally signed reasons and made a small number of clerical and stylistic changes to the text as originally released. As well, I was advised by the Trustee that the transaction was in fact completed on July 22, 2021. Accordingly, I have issued an endorsement today vacating the August 9, 2021 appointment reserved to hear the Timbercreek application and endorsed that matter as being abandoned without costs because moot. No party will be required to appear on August 9, 2021.

Date: July 27, 2021



S.F. Dunphy J.

Appendix “C”

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE PROPOSAL OF YG LIMITED PARTNERSHIP
AND YSL RESIDENCES INC. PURSUANT TO THE
*BANKRUPTCY AND INSOLVENCY ACT***

AMENDED PROPOSAL #3

WHEREAS, pursuant to Notices of Intention to Make a Proposal dated April 30, 2021, YSL Residences Inc. and YG Limited Partnership (collectively, "**YSL**" or the "**Company**") initiated proceedings under the *Bankruptcy and Insolvency Act* (Canada) R.S.C. 1985, B-3 as amended (the "**BIA**"), pursuant to Section 50(1) thereof;

AND WHEREAS a creditor proposal was filed in accordance with section 50(2) of the BIA on May 27, 2021 (the "**Original Proposal**");

AND WHEREAS an amendment to the Original Proposal was filed in accordance with section 50(2) of the BIA on June 3, 2021 (the "**First Amended Proposal**");

AND WHEREAS an amendment to the First Amended Proposal was filed in accordance with section 50(2) of the BIA on June 15, 2021 (the "**Second Amended Proposal**");

AND WHEREAS, the Second Amended Proposal was approved by the Requisite Majority of creditors at the Creditors' Meeting held June 15, 2021;

AND WHEREAS, pursuant to the Amended Reasons for Interim Decision issued July 2, 2021 (the "**Interim Decision**"), the Second Amended Proposal was not approved by the Court in the form presented and the Company and the Proposal Sponsor were permitted to amend the Second Amended Proposal to address the issues set out in the Interim Decision;

AND WHEREAS the Company and the Proposal Sponsor wish to amend the Second Amended Proposal on the terms and conditions set out herein with the intention of addressing the issues set out in the Interim Decision;

NOW THEREFORE the Company hereby submits the following third amended proposal under the BIA to its creditors (as amended, the "**Proposal**").

ARTICLE I **DEFINITIONS**

1.01 Definitions

In this Proposal:

"**Administrative Fees and Expenses**" means the fees, expenses and disbursements incurred by or on behalf of the Proposal Trustee, the solicitors for the Proposal Trustee, the solicitors of the Company both before and after the Filing Date;

"**Affected Creditor Cash Pool**" means a cash pool in the amount of \$30,900,000 to be comprised of (i) all cash on hand in the Company's accounts as at the Proposal Implementation Date; (ii) any and all amounts refunded to or otherwise received by the Company in connection with the transfer of the YSL Project to the Proposal Sponsor as at the Proposal Implementation Date, and (iii) the balance to be provided by the Proposal Sponsor, subject to the refund of any surplus to the Proposal Sponsor in accordance with Section 5.01(a);

"**Affected Creditor Claim**" means a Proven Claim, other than an Unaffected Claim;

"**Affected Creditors**" means all Persons having Affected Creditor Claims, but only with respect to and to the extent of such Affected Creditor Claims;

"**Affected Creditors Class**" means the class consisting of the Affected Creditors established under and for the purposes of this Proposal, including voting in respect thereof;

"**Approval Order**" means an order of the Court, among other things, approving the Proposal;

"**Assumed Contracts**" means, subject to section 8.01(e), those written contracts entered into by or on behalf of the Company in respect of the Project to be identified by the Proposal Sponsor prior to the Proposal Implementation Date, which are to be assumed by the Proposal Sponsor upon Implementation with the consent of the applicable counterparty or otherwise pursuant to an order issued in pursuant to section 84.1 of the BIA;

"**BIA**" has the meaning ascribed to it in the recitals;

"**Business Day**" means a day, other than a Saturday or Sunday, on which banks are generally open for business in Toronto, Ontario;

"**Claim**" means any right or claim of any Person against the Company in connection with any indebtedness, liability, or obligation of any kind whatsoever in existence on the Filing Date (or which has arisen after the Filing Date as a result of the disclaimer or repudiation by the Company on or after the Filing Date of any lease or executory contract), and any interest accrued thereon to and including the Filing Date and costs payable in respect thereof, including by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement (oral or written), by reason of any breach of duty (including any legal, statutory, equitable or fiduciary duty) or by reason of any right of ownership of or title to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise),

and whether or not such indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including any right or ability of any Person to advance a claim for contribution or indemnity or otherwise against the Company with respect to any matter, cause or chose in action, but subject to any counterclaim, set-off or right of compensation in favour of the Company which may exist, whether existing at present or commenced in the future, which indebtedness, liability or obligation (A) is based in whole or in part on facts that existed prior to the Filing Date, (B) relates to a period of time prior to the Filing Date, or (C) is a right or claim of any kind that would be a claim provable in bankruptcy within the meaning of the BIA;

"**Company**" has the meaning ascribed to it in the recitals;

"**Conditional Claim**" means any Claim of an Affected Creditor that is not a Proven Claim as at the Filing Date because one or more conditions precedent to establish such Affected Creditor's entitlement to payment by the Company had not been completed in accordance with any applicable contractual terms as at the Filing Date, and such Affected Creditor has indicated in its proof of claim that the Claim should be treated as a Conditional Claim;

"**Conditional Claim Completion Deadline**" means 5:00pm (Toronto time) on September 27, 2021;

"**Conditional Claim Condition**" has the meaning ascribed to it in Section 2.03(a);

"**Conditions Precedent**" shall have the meaning given to such term in section 8.01 hereof;

"**Condo Purchase Agreement**" means an agreement of purchase and sale in respect of a residential condominium unit in the Project between the Company and a Condo Purchaser;

"**Condo Purchaser**" means a purchaser of a residential condominium unit in the Project pursuant to a Condo Purchase Agreement;

"**Condo Purchaser Claim**" means any Claim of a Condo Purchaser in respect of its Condo Purchase Agreement;

"**Construction Lien Claim**" means any Proven Claim in respect of amounts secured by a perfected lien registered against title to the Property and are valid in accordance with the *Construction Act* (Ontario);

"**Construction Lien Creditor**" means a creditor with a Construction Lien Claim;

"**Convenience Creditor**" means an Affected Creditor with a Convenience Creditor Claim;

"**Convenience Creditor Claim**" means (a) any Proven Claims of an Affected Creditor in an amount less than or equal to \$15,000, and (b) any Proven Claim of an Affected Creditor in an amount greater than \$15,000 if the relevant Creditor has made a valid election for the purposes of

this Proposal in accordance with this Proposal prior to the Convenience Creditor Election Deadline;

"Convenience Creditor Consideration" means, in respect of a Convenience Creditor Claim, the lesser of (a) \$15,000, and (b) the amount of the Proven Claim of such Convenience Creditor;

"Court" means the Ontario Superior Court of Justice (Commercial List);

"Court Approval Date" means the date upon which the Court makes the Approval Order;

"Creditors' Meeting" means the duly convened meeting of the Affected Creditors which took place on June 15, 2021;

"Crown" means Her Majesty in Right of Canada or of any Province of Canada and their agents;

"Crown Claims" means the Claims of the Crown set out in Section 60(1.1) of the BIA outstanding as at the Filing Date against the Company, if any, payment of which will be made in priority to the payment of the Preferred Claims and to distributions in respect of the Ordinary Claims, and specifically excludes any other claims of the Crown;

"Disputed Claim" means any Claim which has not been finally resolved as a Proven Claim in accordance with the BIA as at the Proposal Implementation Date;

"Distributions" means a distribution of funds made by the Proposal Trustee from the Affected Creditor Cash Pool to Affected Creditors in respect of Affected Creditor Claims, in accordance with Article V;

"Effective Time" means 12:00 p.m. (Toronto time) on the Proposal Implementation Date;

"Equity Claim" has the meaning ascribed to it in Section 2 of the BIA, and includes, without limitation, the Claims of all limited partners of YG LP and those Equity Claims deemed to be equity pursuant to the Interim Decision;

"Existing Equity" means the limited partnership units of YG LP and those Equity Claims deemed to be equity pursuant to the Interim Decision;

"Existing Equityholders" means the holders of the Existing Equity immediately prior to the Effective Time;

"Filing Date" means April 30, 2021, being the date upon which Notices of Intention to Make a Proposal were filed by the Company with the Official Receiver in accordance with the BIA;

"First Amended Proposal" has the meaning ascribed to it in the recitals;

"Governmental Authority" means any government, regulatory authority, governmental department, agency, commission, bureau, official, minister, Crown corporation, court, board, tribunal or dispute settlement panel or other law, rule or regulation-making organization or entity: (i) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them; or (ii) exercising, or entitled or

purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power;

"Implementation" means the completion and implementation of the transactions contemplated by this Proposal;

"Implementation Certificate" has the meaning ascribed to it in Section 8.01(j);

"Interim Decision" has the meaning ascribed to it in the recitals;

"Official Receiver" shall have the meaning ascribed thereto in the BIA;

"Original Proposal" has the meaning ascribed to it in the recitals;

"Outside Date" means July 31, 2021;

"Permitted Encumbrances" means those encumbrances on the Property listed in Schedule "A" hereto;

"Person" means any individual, sole proprietorship, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, Governmental Authority and a natural person in such person's capacity as trustee, executor, administrator or other legal representative;

"Preferred Claim" means a Claim enumerated in Section 136(1) of the BIA outstanding as at the Filing Date against the Company, if any, the payment of which will be made in priority to distributions in respect of Affected Creditor Claims;

"Pro Rata Share" means the fraction that is equal to (a) the amount of the Proven Claim of an Affected Creditor that is not a Convenience Creditor, divided by (b) the aggregate amount of all Proven Claims held by Affected Creditors who are not Convenience Creditors;

"Project" means the mixed-used office, retail and residential condominium development to be constructed on the Property currently consisting of approximately 1,100 residential condominium units and 170 parking units and known as Yonge Street Living Residences;

"Property" means the real property owned by the Company and municipally known as 363-391 Yonge Street and 3 Gerrard Street East, Toronto, Ontario, and legally described by PIN numbers 21101-0042 (LT) to 21101-0049 (LT), inclusive;

"Proposal" means this Amended Proposal of the Company, and any amendments, modifications and/or supplements hereto made in accordance with the terms hereof;

"Proposal Implementation Date" means the date on which Implementation occurs, which shall occur following the satisfaction of the Conditions Precedent, and no later than the Outside Date;

"Proposal Sponsor" means Concord Properties Developments Corp.;

"Proposal Sponsor Agreement" means that agreement entered into among the Proposal Sponsor and the Company as of April 30, 2021, as amended from time to time;

"Proposal Trustee" means KSV Restructuring Inc. in its capacity as trustee in respect of this Proposal, or its duly appointed successor;

"Proposal Trustee's Website" means the following website: www.ksvadvisory.com/insolvency-cases/case/yg-limited-partnership;

"Proven Claim" means in respect of an Affected Creditor, the amount of a Claim as finally determined in accordance with the provisions of the BIA, provided that the Proven Claim of an Affected Creditor with a Claim in excess of \$15,000 that has elected to be a Convenience Creditor by submitting a Convenience Creditor Election Form shall be valued for voting purposes as \$15,000;

"Released Claims" means, collectively, the matters that are subject to release and discharge pursuant to Section 7.01;

"Released Parties" means, collectively, (i) the Company, (ii) each affiliate or subsidiary of the Company; (iii) the Proposal Sponsor, (iv) the Proposal Trustee, and (v) subject to section 7.01, each of the foregoing Persons' respective former and current officers, directors, principals, members, affiliates, limited partners, general partners, managed accounts or funds, fund advisors, employees, financial and other advisors, legal counsel, and agents, each in their capacity as such;

"Required Majority" means an affirmative vote of a majority in number and two-thirds in value of all Proven Claims in the Affected Creditors Class entitled to vote, who were present and voting at the Creditors' Meeting (whether online, in-person, by proxy or by voting letter) in accordance with the voting procedures established by this Proposal and the BIA;

"Second Amended Proposal" has the meaning ascribed to it in the recitals;

"Secured Claims" means:

- (a) The Claim of Timbercreek which is secured by, among other things a mortgage, charge, lien or other security validly charging or encumbering the Property;
- (b) The Claim of Westmount, which is secured by, among other things, a mortgage, charge, lien or other security validly charging or encumbering the Property;
- (c) The Claim of 2576725 Ontario Inc. which is secured by, among other things, a mortgage, charge, lien or other security validly charging or encumbering the Property;
- (d) All Construction Lien Claims but only to the extent of such Construction Lien Claims;

"Secured Creditor" means a Person holding a Secured Claim, with respect to, and to the extent of such Secured Claim;

"**Superintendent's Levy**" means the levy payable to the Superintendent of Bankruptcy pursuant to sections 60(4) and 147 of the BIA;

"**Timbercreek**" means, collectively, Timbercreek Mortgage Servicing Inc. and 2292912 Ontario Inc.;

"**Unaffected Claim**" means:

- (a) the Administrative Fees and Expenses;
- (b) the Claim of Timbercreek;
- (c) the Claim of Westmount;
- (d) the Claim of 2576725 Ontario Inc., which is secured by, among other things, an equitable mortgage encumbering the Property;
- (e) any Claim of the City of Toronto;
- (f) all Condo Purchaser Claims;
- (g) all Construction Lien Claims, but only to the extent such Claims are valid in accordance with the *Construction Act* (Ontario) and have been perfected by the Proposal Implementation Date; and
- (h) such other Claims as the Company and Proposal Sponsor may agree with the consent of the Proposal Trustee;

"**Unaffected Creditor**" means a creditor holding an Unaffected Claim, with respect to and to the extent of such Unaffected Claim;

"**Undeliverable Distributions**" has the meaning ascribed to it in Section 5.04;

"**Westmount**" means Westmount Guarantee Services Inc.;

"**YSL**" has the meaning ascribed to it in the recitals; and

"**YSL Project**" means the mixed-use commercial and residential condominium development to be constructed on the Property.

1.02 Intent of Proposal

This Proposal is intended to provide all Affected Creditors a greater recovery than they would otherwise receive if the Company were to become bankrupt under the BIA. More specifically, the Proposal will provide for a payment in full of Secured Claims and will provide a significant recovery in respect of Affected Creditor Claims. While the exact recovery cannot be determined until all Claims have been determined, the Company expects Affected Creditors to receive a significant, if not a full recovery, on their Claims and, in any event, a greater recovery than would occur if the Company were to become a bankrupt under the BIA.

In consideration for, among other things, its sponsorship of this Proposal, including the satisfaction of all Secured Claims, Preferred Claims and the establishment of the Affected Creditor Cash Pool, on the Proposal Implementation Date, title to the Property, subject only to the Permitted Encumbrances, as well as the Company's interests and obligations under the Assumed Contracts and Condo Purchase Agreements shall be acquired by the Proposal Sponsor, or its nominee in accordance with the terms hereof.

1.03 Date for Any Action

In the event that any date on which any action is required to be taken under this Proposal by any of the parties is not a Business Day, such action will be required to be taken on the next succeeding day which is a Business Day.

1.04 Time

All times expressed in this Proposal are local time in Toronto, Ontario, Canada unless otherwise stipulated. Time is of the essence in this Proposal.

1.05 Statutory References

Except as otherwise provided herein, any reference in this Proposal to a statute includes all regulations made thereunder, all amendments to such statute or regulation(s) in force from time to time, and any statute or regulation that supplements or supersedes such statute or regulation(s).

1.06 Successors and Assigns

The Proposal will be binding upon and will enure to the benefit of the heirs, administrators, executors, legal personal representatives, successors, and assigns of any Person named or referred to in the Proposal.

1.07 Currency

Unless otherwise stated herein, all references to currency and to "\$" in the Proposal are to lawful money of Canada.

1.08 Articles of Reference

The terms "hereof", "hereunder", "herein" and similar expressions refer to the Proposal and not to any particular article, section, subsection, clause or paragraph of the Proposal and include any agreements supplemental hereto. In the Proposal, a reference to an article, section, subsection, clause or paragraph will, unless otherwise stated, refer to an article, section, subsection, clause or paragraph of the Proposal.

1.09 Interpretation Not Affected by Headings

The division of the Proposal into articles, sections, subsections, clauses or paragraphs and the insertion of a table of contents and headings are for convenience of reference only and will not affect the construction or interpretation of this Proposal.

1.10 Numbers

In this Proposal, where the context requires, a word importing the singular number will include the plural and *vice versa* and a word or words importing gender will include all genders.

ARTICLE II CLASSIFICATION AND TREATMENT OF AFFECTED PARTIES

2.01 Classes of Creditors

For the purposes of voting on the Proposal, there was only one class of creditors, being the Affected Creditors Class. For the purposes of voting on the Proposal, each Convenience Creditor was deemed to vote in and as part of the Affected Creditors Class.

2.02 Treatment of Affected Creditors

- (a) As soon practicable after the Proposal Implementation Date, and after taking an adequate reserve in respect of any unresolved Claims pursuant to Section 5.03:
 - i. all Affected Creditors (other than Convenience Creditors and Affected Creditors holding Conditional Claims where one or more Conditional Claim Conditions have not been completed) shall receive, in respect of such Affected Creditor Claim, its Pro Rata Share of the Affected Creditor Cash Pool, net of the Superintendent's Levy, made by the Proposal Trustee from the Affected Creditor Cash Pool from time to time in accordance with Article V hereof, provided that aggregate Distributions to an Affected Creditor shall not exceed 100% of the value of such Affected Creditor's Proven Claim; and
 - ii. all Convenience Creditors shall receive in respect of such Convenience Creditor Claims, the Convenience Creditor Consideration, net of the Superintendent's Levy;
- (b) Subject to Section 2.03, on the Proposal Implementation Date, each Affected Creditor Claim shall, and shall be deemed to have been irrevocably and finally extinguished, discharged and released, and each Affected Creditor shall have no further right, title or interest in or to its Affected Creditor Claim.

2.03 Conditional Claims Protocol

If an Affected Creditor submits a proof of claim to the Proposal Trustee indicating that its Claim against the Company is a Conditional Claim due to the fact that one or more pre-conditions to such Affected Creditor's right to payment by the Company had not been satisfied as at the Filing Date due to the acts or omissions of such Affected Creditor, then:

- (a) such Affected Creditor shall have until the Conditional Claim Completion Deadline to complete or otherwise satisfy all outstanding pre-conditions to payment in accordance with the terms of the applicable agreement between such Affected

Creditor and the Company (all such conditions, "**Conditional Claim Conditions**"), and provide notice of such completion to the Proposal Trustee along with reasonable proof thereof;

- (b) if such Affected Creditor provides the Proposal Trustee with proof of the completion of all applicable Conditional Claim Conditions prior to the Conditional Claim Completion Deadline, then, subject to the Proposal Trustee's confirmation of same, such Affected Creditor's Conditional Claim shall be deemed to be a Proven Claim, and such Affected Creditor shall be entitled to a Distribution in accordance with Section 5.02, and, effective immediately upon issuance of such distribution to the Affected Creditor by the Proposal Trustee, the releases set out in Section 7.01 shall become effective; and
- (c) if such Affected Creditor has not satisfied one or more Conditional Claim Conditions by the Conditional Claim Completion Deadline, then, effective immediately upon the Conditional Claim Completion Deadline, such Affected Creditor's Conditional Claim shall be irrevocably and finally extinguished and such Affected Creditor shall have no further right, title or interest in and to its Conditional Claim and the releases set out in Section 7.01 shall become effective in respect of such Conditional Claim.

2.04 Existing Equityholders and Holders of Equity Claims

Subject to Section 7.01, all Equity Claims shall be fully, finally and irrevocably and forever compromised, released, discharged, cancelled, extinguished and barred as against the Property on the Proposal Implementation Date in accordance with Section 6.011.1(1)(1)(h).

2.05 Application of Proposal Distributions

All amounts paid or payable hereunder on account of the Affected Creditor Claims (including, for greater certainty, any securities received hereunder) shall be applied as follows: (i) first, in respect of the principal amount of the Affected Creditor Claim, and (ii) second, in respect of the accrued but unpaid interest on the Affected Creditor Claim.

2.06 Full Satisfaction of All Affected Creditor Claims

All Affected Creditors shall accept the consideration set out in Section 2.02 hereof in full and complete satisfaction of their Affected Creditor Claims, and all liens, certificates of pending litigation, executions, or other similar charges or actions or proceedings in respect of such Affected Creditor Claims will have no effect in law or in equity against the Property, or other assets and undertaking of the Company. Upon the Implementation of the Proposal, any and all such registered liens, certificates of pending litigation, executions or other similar charges or actions brought, made or claimed by Affected Creditors will be and will be deemed to have been discharged, dismissed or vacated without cost to the Company and the Company will be released from any and all Affected Creditor Claims of Affected Creditors, subject only to the right of Affected Creditors to receive Distributions as and when made pursuant to this Proposal.

2.07 Undeliverable Distributions

Undeliverable Distributions shall be dealt with and treated in the manner provided for in the BIA and the directives promulgated pursuant thereto.

ARTICLE III CREDITORS' MEETING AND AMENDMENTS

3.01 Meeting of Affected Creditors

As set out in the Interim Decision, the Requisite Majority approved the Proposal at the Creditors' Meeting.

3.02 Assessment of Claims

The provisions of section 135 of the BIA will apply to all proofs of claim submitted by Affected Creditors, including in respect of Disputed Claims. In the event that a duly submitted proof of claim has been disallowed or revised for voting purposes by the Proposal Trustee, and such disallowance has been disputed by the applicable Affected Creditor in accordance with Section 135(4) of the BIA, or in the case of any Claim that is a Conditional Claim as at the time of the Creditors' Meeting, then the dollar value for voting purposes at the Creditors' Meeting shall be the dollar amount of such disputed claim or Conditional Claim, as the case may be, set out in the proof of claim submitted by such Affected Creditor, without prejudice to the determination of the dollar value of such Affected Creditor's disputed claim or Conditional Claim for distribution purposes.

Except as expressly provided herein, the Proposal Trustee's determination of claims pursuant to this Proposal and the BIA shall only apply for the purposes of this Proposal, and such determination shall be without prejudice to a Creditor's right to submit a revised proof of claim in subsequent proceedings in respect of the Company should this Proposal not be implemented.

3.03 Modification to Proposal

Subject to the provisions of the BIA, after the Creditors' Meeting (and both prior to and subsequent to the issuance of the Approval Order) and subject to the consent of the Proposal Trustee and the Proposal Sponsor, the Company may at any time and from time to time vary, amend, modify or supplement the Proposal.

ARTICLE IV PREFERRED CLAIMS AND MANDATORY PAYMENTS

4.01 Crown Claims

Within thirty (30) Business Days following the granting of the Approval Order, the Crown Claims, if any, will be paid by the Proposal Trustee, in full with related interest and penalties as prescribed by the applicable laws, regulations and decrees.

4.02 Preferred Claims

Within thirty (30) Business Days following the granting of the Approval Order, the Preferred Claims, if any, will be paid in full by the Proposal Trustee.

ARTICLE V FUNDING AND DISTRIBUTIONS

5.01 Proposal Sponsor to Fund

- (a) On the Proposal Implementation Date, the Proposal Sponsor shall deliver to the Proposal Trustee by way of wire transfer (in accordance with wire transfer instructions provided by the Proposal Trustee at least three (3) business days prior to the Proposal Implementation Date) the amount necessary to establish the Affected Creditor Cash Pool in accordance with the provisions of this Proposal, provided that any surplus amounts over and above the Affected Creditor Cash Pool amount of \$30,900,000 that are returned to the Company in connection with the transfer of the YSL Project to the Proposal Sponsor shall be promptly returned to the Proposal Sponsor, including, without limitation, the cash collateral to be released by TD Bank when the letters of credit held by the City of Toronto and the Toronto Transit Commission are replaced by letters of credit to be provided by the Proposal Sponsor; and
- (b) The Proposal Trustee shall hold the Affected Creditor Cash Pool in a segregated account and shall distribute such cash, net of any reserves established in respect of unresolved Claims, in accordance with Section 5.03 of the Proposal.
- (c) The Proposal Sponsor shall effect payments in respect of the Unaffected Claims to those parties entitled to such payments directly and shall provide the Proposal Trustee with proof of such payments, as applicable.

5.02 Distributions

As soon as possible after the Proposal Implementation Date and the payments contemplated by Sections 4.01 and 4.02, the Proposal Trustee shall make a Distribution to each Affected Creditor with a Proven Claim, in an amount equal to such Affected Creditor's Pro Rata Share of the Affected Creditor Cash Pool, net of the Superintendent's Levy, and net of any amounts held in reserve in respect of unresolved Claims, in accordance with Section 5.03.

Thereafter, the Proposal Trustee may make further Distributions to Affected Creditors from time to time from the reserves established pursuant to Section 5.03, as unresolved Claims are resolved in accordance with the terms of Section 3.02.

5.03 Reserves for Unresolved Claims

Prior to making any Distribution to Affected Creditors pursuant to Section 5.02, the Proposal Trustee shall set aside in the Affected Creditor Cash Pool sufficient funds to pay all Affected

Creditors with Disputed Claims or Conditional Claims the amounts such Affected Creditors would be entitled to receive in respect of that particular Distribution pursuant to this Proposal, in each case as if their Disputed Claim or Conditional Claim, as the case may be, had been a Proven Claim at the time of such Distribution. Upon the resolution of each Disputed Claim in accordance with the BIA, or upon final resolution of any Conditional Claim, any funds which have been reserved by the Proposal Trustee to deal with such Disputed Claim or such Conditional Claim, as applicable, but which are not required to be paid to the Affected Creditor shall remain in the Affected Creditor Cash Pool and become available for further Distributions to Affected Creditors in respect of their Proven Claims.

5.04 Method of Distributions

Unless otherwise agreed to by the Proposal Trustee and an Affected Creditor, all Distributions made by the Proposal Trustee pursuant to this Proposal shall be made by cheque mailed to the address shown on the proof of claim filed by such Affected Creditor or, where an Affected Creditor has provided the Trustee with written notice of a change of address, to such address set out in that notice. If any delivery or distribution to be made pursuant to Article V hereof in respect of an Affected Creditor Claim is returned as undeliverable, or in the case of a distribution made by cheque, the cheque remains uncashed (each an "**Undeliverable Distribution**"), no other crediting or delivery will be required unless and until the Proposal Trustee is notified of the Affected Creditor's then current address. The Proposal Trustee's obligations to the Affected Creditor relating to any Undeliverable Distribution will expire six months following the date of delivery or mailing of the cheque or other distribution, after which date the Proposal Trustee's obligations under this Proposal in respect of such Undeliverable Distribution will be forever discharged and extinguished, and the amount that the Affected Creditor was entitled to be paid under the Proposal shall be distributed to the Proposal Sponsor.

5.05 Residue After All Distributions Made

In the event that any residual amount remains in the Affected Creditor Cash Pool following the Proposal Trustee's final Distribution to Affected Creditors as provided herein, such residual funds shall be held by the Proposal Trustee pending receipt of a duly issued direction from all of the holders of Class A Preferred Units of YG LP, or otherwise by order of the Court.

ARTICLE VI IMPLEMENTATION

6.01 Proposal Implementation Date Transactions

Commencing at the Effective Time, the following events or transactions will occur, or be deemed to have occurred and be taken and effected, in the following order in five minute increments (unless otherwise indicated) and at the times and in the order set out in this Section 6.01 (or in such other manner or order or at such other time or times as the Company and the Proposal Sponsor may agree, each acting reasonably), without any further act or formality required on the part of any Person, except as may be expressly provided herein:

- (a) Either the Proposal Sponsor will, at its election, but subject to obtaining the consent of the applicable Secured Creditor, assume the Secured Claims, or on behalf of the Company, the Proposal Sponsor will make payment in full to Secured Creditors in respect of their Secured Claims, in accordance with Section 5.01(c) calculated as at the Closing Date;
- (b) the releases in respect of Secured Claims referenced in section 7.01 shall become effective, and any registrations on title to the Property in respect of such Secured Claims shall, unless otherwise agreed between the Secured Creditor and the Proposal Sponsor with the consent of the Proposal Trustee, be discharged from title to the Property;
- (c) the Proposal Sponsor shall provide to the Proposal Trustee the amount necessary to establish the Affected Creditor Cash Pool, in accordance with Section 5.01(a), in full and final settlement of all Affected Creditor Claims;
- (d) the Proposal Sponsor shall provide the Proposal Trustee with an amount necessary to satisfy the Administrative Fees and Expenses, including a reserve in respect of the reasonably estimated additional Administrative Fees and Expenses anticipated to be incurred in connection with the administration of Distributions, resolution of any unresolved Claims pursuant to Section 5.03, and the Proposal Trustee's discharge;
- (e) title to the Property shall be registered in the name of the Proposal Sponsor, or its nominee, together with any charges applicable to security held by the lenders to the Proposal Sponsor in respect of the purchase of the Property and construction of the Project;
- (f) the assumption of the Assumed Contracts by the Proposal Sponsor, or its nominee, shall become effective;
- (g) all Affected Creditor Claims (including without limitation all Convenience Creditor Claims) shall, and shall be deemed to be, irrevocably and finally extinguished and the Affected Creditors shall have no further right, title or interest in and to their respective Affected Creditor Claims, except with respect to their right to receive a Distribution, if applicable, and in such case, only to the extent of such Distribution;
- (h) subject to Section 7.01, all Equity Claims shall, and shall be deemed to be, irrevocably and finally extinguished and all Existing Equityholders shall have no further right, title or interest in and to their respective Equity Claims as against the Property; and
- (i) the releases in respect of Affected Creditor Claims (other than Conditional Claims with Conditional Claim Conditions not satisfied as at the Effective Time) referred to in Section 7.01 shall become effective.

ARTICLE VII

RELEASES

7.01 Release of Released Parties

At the applicable time pursuant to Section 6.01(b), in the case of Secured Claims, and Section 6.01(i), in respect of Affected Creditor Claims, each of the Released Parties shall be released and discharged from all present and future actions, causes of action, damages, judgments, executions, obligations, liabilities and Claims of any kind or nature whatsoever arising on or prior to the Proposal Implementation Date in connection with this Proposal and the Project, and any proceedings commenced with respect to or in connection with this Proposal, the Project, the transactions contemplated hereunder, and any other actions or matters related directly or indirectly to the foregoing, provided that nothing in this paragraph shall release or discharge (i) any of the Released Parties from or in respect of their respective obligations under this Proposal or any order issue by the Court in connection with this Proposal or any document ancillary to any of the foregoing, (ii) any Released Party from liabilities or claims which cannot be released pursuant to s. 50(14) of the BIA, as determined by the final, non-appealable judgment of the Court, or (iii) any Released Party from any Secured Claim of Timbercreek. The foregoing release shall not be construed to prohibit a party in interest from seeking to enforce the terms of this Proposal, including with respect to Distributions, or any contract or agreement entered into pursuant to, in connection with or contemplated by this Proposal. Notwithstanding the foregoing, the directors and officers of the Company, its affiliates, the former directors and officers, and general partner of the Company shall not be released in respect of any (x) Equity Claim as defined in section 2 of the BIA or any analogous claim in respect of a partnership interest or (y) any claim by a former employee of the Company or its affiliates relating to unpaid wages or other employment remuneration.

7.02 Injunctions

All Persons are permanently and forever barred, estopped, stayed and enjoined, on and after the Proposal Implementation Date, with respect to any and all Released Claims, from (i) commencing, conducting or continuing in any manner, directly or indirectly, any action, suits, demands or other proceedings of any nature or kind whatsoever of any Person against the Released Parties, as applicable; (ii) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, guarantee, decree or order against the Released Parties; (iii) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any lien or encumbrance of any kind against the Released Parties or their property; or (iv) taking any actions to interfere with the implementation or consummation of this Proposal or the transactions contemplated hereunder; provided, however, that the foregoing shall not apply to the enforcement of any obligations under this Proposal or any document, instrument or agreement executed to implement this Proposal.

ARTICLE VIII
CONDITIONS PRECEDENT

8.01 Conditions Precedent

This Proposal will take effect on the Proposal Implementation Date. The Implementation of this Proposal on the Proposal Implementation Date is subject to the satisfaction or waiver (in the sole discretion of the Proposal Sponsor) of the following conditions precedent (collectively, the "**Conditions Precedent**"):

- (a) the Proposal is approved by the Required Majority;
- (b) the Approval Order, in form and substance satisfactory to the Proposal Sponsor, has been issued, has not been stayed and no appeal therefrom is outstanding;
- (c) there shall not be in effect any preliminary or final decision, order or decree by a Governmental Authority, no application shall have been made to any Governmental Authority, and no action or investigation shall have been announced, threatened or commenced by any Governmental Authority, in consequence or in connection with the Proposal or the Project that restrains, impedes or prohibits (or if granted could reasonably be expected to restrain, impede or inhibit), the Proposal or any part thereof or the Project or any part thereof or requires or purports to require a variation of the Proposal or the Project;
- (d) registrations in respect of all encumbrances, including without limitation any registrations in respect of Construction Lien Claims, but excluding the Permitted Encumbrances, shall have been deleted from title to the Property, provided that (a) should the Implementation of the Proposal not occur following the deletion of an Affected Creditor's encumbrance pursuant to this provision, such Affected Creditor shall have the right to renew such registration, and (b) the Company and/or the Proposal Sponsor shall be at liberty to pay security into Court (by way of a bond or similar instrument) in respect of any Construction Lien Claim;
- (e) the Proposal Sponsor, or its nominee, shall have entered into assignment and assumption agreements in respect of all Assumed Contracts, or an assignment order pursuant to section 84.1 of the BIA shall have been issued, in each case in form and substance satisfactory to the Proposal Sponsor, provided that it shall be a condition of the assumption of each Assumed Contract that the written agreements set out in the list of Assumed Contracts provided by the Proposal Sponsor (as amended from time to time) represent the totality of the contractual arrangements between the Company and each applicable counterparty, and no verbal or extra-contractual arrangements will be recognized by the Proposal Sponsor;
- (f) sufficient financing for the acquisition of the Property by the Proposal Sponsor, or its nominee, shall have been provided by Otera Capital Inc., on terms satisfactory to the Proposal Sponsor, and all material conditions precedent to such financing shall be capable of completion by the Proposal Sponsor prior to the Proposal Implementation Date;

- (g) the Proposal Implementation Date shall occur on the day that is three Business Days following the issuance of the Approval Order, or such other date prior to the Outside Date as may be agreed by the Proposal Sponsor;
- (h) any required resolutions authorizing the Company to file this Proposal and any amendments thereto will have been approved by the board of directors of the Company;
- (i) the Proposal Sponsor Agreement shall not have been terminated by the Proposal Sponsor; and
- (j) the Company and the Proposal Sponsor shall have delivered a certificate to the Proposal Trustee that all of the conditions precedent to the Implementation of the Proposal have been satisfied or waived (the "**Implementation Certificate**").

Upon the Proposal Trustee's receipt of the Implementation Certificate, the Affected Creditor Cash Pool and the funding required by Section 6.01(d), the Implementation of the Proposal shall have been deemed to have occurred and all actions deemed to occur upon Implementation of the Proposal shall occur without the delivery or execution of any further documentation, agreement or instrument.

ARTICLE IX

EFFECT OF PROPOSAL

9.01 Binding Effect of Proposal

After the issuance of the Approval Order by the Court, subject to satisfaction of the Conditions Precedent, the Proposal shall be implemented by the Company and shall be fully effective and binding on the Company and all Persons affected by the Proposal. Without limitation, the treatment of Affected Creditor Claims under the Proposal shall be final and binding on the Company, the Affected Creditors, and all Persons affected by the Proposal and their respective heirs, executors, administrators, legal representatives, successors, and assigns. For greater certainty, this Proposal shall have no effect upon Unaffected Creditors.

9.02 Amendments to Agreements and Paramountcy of Proposal

Notwithstanding the terms and conditions of all agreements or other arrangements with Affected Creditors entered into before the Filing Date, for so long as an event of default under this Proposal has not occurred, all such agreements or other arrangements will be deemed to be amended to the extent necessary to give effect to all the terms and conditions of this Proposal. In the event of any conflict or inconsistency between the terms of such agreements or arrangements and the terms of this Proposal, the terms of this Proposal will govern and be paramount.

9.03 Deemed Consents and Authorizations of Affected Creditors

At the Effective Time each Affected Creditor shall be deemed to have:

- (a) executed and delivered to the Company all consents, releases, assignments, and waivers, statutory or otherwise, required to implement and carry out this Proposal in its entirety;
- (b) waived any default by the Company in any provision, express or implied, in any agreement or other arrangement, written or oral, existing between such Affected Creditor and the Company that has occurred on or prior to the Proposal Implementation Date; and
- (c) agreed, in the event that there is any conflict between the provisions, express or implied, of any agreement or other arrangement, written or oral, existing between such Affected Creditor and the Company as at the date and time of Court approval of the Proposal (other than those entered into by the Company on, or with effect from, such date and time) and the provisions of this Proposal, that the provisions of this Proposal shall take precedence and priority and the provisions of such agreement or other arrangement shall be amended accordingly.

ARTICLE X
ADMINISTRATIVE FEES AND EXPENSES

10.01 Administrative Fees and Expenses

Administrative Fees and Expenses including a reserve in respect of the reasonably estimated additional Administrative Fees and Expenses anticipated to be incurred in connection with the administration of Distributions, resolution of any unresolved Claims pursuant to Section 5.03, and the Proposal Trustee's discharge will be paid in cash by the Proposal Sponsor on the Proposal Implementation Date.

ARTICLE XI
INDEMNIFICATION

11.01 Indemnification of Proposal Trustee

The Proposal Trustee shall be indemnified in full by the Proposal Sponsor for: (a) all personal liability arising from fulfilling any duties or exercising any powers or duties conferred upon it by this Proposal or under the BIA, except for any willful misconduct or gross negligence; and (b) all Administrative Fees and Expenses reasonably incurred but not covered by the payment set out in Section 10.01.

ARTICLE XII
POST FILING GOODS AND SERVICES

12.01 Payment of Payroll Deductions and Post Filing Claims

The following shall continue to be paid in the ordinary course by the Company prior to and after the Court Approval Date and shall not constitute Distributions or payments under this Proposal:

- (a) all Persons, who may advance monies, or provide goods or services to the Company after the Filing Date shall be paid by the Company in the ordinary course of business;
- (b) current source deductions and other amounts payable pursuant to Section 60(1.2) of the BIA, if applicable, shall be paid to Her Majesty in Right of Canada in full by the Company as and when due; and
- (c) current goods and services tax (GST), and all amounts owing on account of provincial sales taxes, if applicable, shall be paid in full by the Company as and when due.

ARTICLE XIII
TRUSTEE, CERTIFICATE OF COMPLETION, AND DISCHARGE OF TRUSTEE

13.01 Proposal Trustee

KSV Restructuring Inc. shall be the Proposal Trustee pursuant to this Proposal and upon the making of the Distributions and the payment of any other amounts provided for in this Proposal, the Proposal Trustee will be entitled to be discharged from its obligations under the terms of this Proposal. The Proposal Trustee is acting in its capacity as Proposal Trustee under this Proposal, and not in its personal capacity and shall not incur any liabilities or obligations in connection with this Proposal or in respect of the business, liabilities or obligations of the Company, whether existing as at the Filing Date or incurred subsequent thereto.

The Proposal Trustee shall not incur, and is hereby released from, any liability as a result of carrying out any provisions of this Proposal and any actions related or incidental thereto, save and except for any gross negligence or willful misconduct on its part (as determined by a final, non-appealable judgment of the Court).

13.02 Certificate of Completion and Discharge of Proposal Trustee

Upon the Proposal Trustee having received the Implementation Certificate, and all Distributions to Affected Creditors having been administered in accordance with Article V, the terms of the Proposal shall be deemed to be fully performed and the Proposal Trustee shall provide a certificate to the Company, the Proposal Sponsor and to the Official Receiver pursuant to Section 65.3 of the BIA and the Proposal Trustee shall be entitled to be discharged.

ARTICLE XIV
GENERAL

14.01 Valuation

For purposes of voting and Distributions, all Claims shall be valued as at the Filing Date.

14.02 Preferences, Transfers at Undervalue

In conformity with Section 101.1 of the BIA, Sections 95-101 of the BIA and any provincial statute related to preference, fraudulent conveyance, transfer at undervalue, or the like shall not apply to this Proposal. As a result, all of the rights, remedies, recourses and Claims described therein:

- (a) all such rights, remedies and recourses and any Claims based thereon shall be completely unavailable to the Proposal Trustee or any Affected Creditors against the Company, the Property, or any other Person whatsoever; and
- (b) the Proposal Trustee and all of the Affected Creditors shall be deemed, for all purposes whatsoever, to have irrevocably and unconditionally waived and renounced such rights, remedies and recourses and any Claims based thereon against the Company, the Property any other Person.

14.03 Governing Law

The Proposal shall be governed by and construed in accordance with the laws of Ontario and the federal laws of Canada applicable therein. Any disputes as to the interpretation or application of the Proposal and all proceedings taken in connection with the Proposal shall be subject to the exclusive jurisdiction of the Court.

[remainder of page left intentionally blank]

Dated at Toronto, this 15th day of July, 2021.

YSL RESIDENCES INC.

Per:


Name: Daniel Casey
Title: President

I have the authority to bind the Corporation.

**YG LIMITED PARTNERSHIP, by its
general partner 9615334 CANADA INC.**

Per:


Name: Daniel Casey
Title: President

I have the authority to bind the Corporation.

SCHEDULE A

PERMITTED ENCUMBRANCES

<u>Instrument Number</u>	<u>Description</u>
EP138153	- Canopy Agreement with the City of Toronto
EP146970	- Encroachment Agreement with the City of Toronto
CT114131	- Encroachment Agreement with the City of Toronto
CT169812	- Canopy Agreement with the City of Toronto
CA11215	- Development Agreement with the City of Toronto
CA231470	- Encroachment Agreement with the City of Toronto
AT5142530	- Heritage Easement Agreement with the City of Toronto
AT5154721	- Heritage By-Law
AT5154722	- Heritage By-Law
AT5157423	- Heritage By-Law
AT5157424	- Heritage By-Law
AT5246455	- Section 37 Agreement
AT5473163	- Application to Register a Court Order (Equitable Mortgage)

Appendix “D”

File No. 10333

June 21, 2021

BY EMAIL

Mitch Vininsky, Bobby Kofman and Murtaza Tallat
KSV Advisory Inc.
150 King Street West, Suite 2308
Toronto, Ontario M5H 1J9

Re: YG Limited Partnership and YSL Residences Inc. (Re) (31-2734090)

We are counsel for a group of former employees of YSL, David Ryan Millar, Sarven (Steve) Cicekian, Mike Catsiliras, Louie Giannakopoulos and Marco Mancuso (the **Former Employees**).

The Former Employees wish to amend their proofs of claim to partially withdraw, reduce, and credit certain claims. I have attached revised particulars of the each proof of claim, which reflect these amendments. With these amendments, the aggregate amount of the claims asserted by each of the Former Employees will be as follows:

1. David Ryan Millar – \$734,996.71
2. Sarven (Steve) Cicekian – \$767,399.00
3. Mike Catsiliras – \$681,190.50
4. Louie Giannakopoulos – \$444,615.00
5. Marco Mancuso – \$430,000.00

Total: \$3,058,200.21

NAYMARK LAW

Please let us know if you require any further information to adjudicate the amended claims of the Former Employees.

Yours truly,

A handwritten signature in black ink, appearing to read "J.G.", with a stylized flourish at the end.

James Gibson

Enclosures

Copy to: Daniel Naymark, Naymark Law
David Gruber and Jesse Mighton, Bennett Jones LLP

EXHIBIT "A" – AMENDED PARTICULARS OF PROOF OF CLAIM

1. THE CLAIMS (together, the **Claims**) as against YG Limited Partnership and YSL Residences Inc. (together, **YSL**) are:

- (a) damages for constructive dismissal: \$141,101.38;
- (b) bonus accrued in November 2019 related to the YSL project: \$83,333.33;
- (c) bonus unit credit for the condominium unit in the Clover project (the **Clover unit**): \$200,000.00;
- (d) bonus unit credit for the condominium unit in the 33 Yorkville project (the **Yorkville unit**): \$350,000.00;
- (e) unit credit for the Clover unit granted as an employment benefit: \$17,596.00;
- (f) unit credit for the Yorkville unit granted as an employment benefit: \$23,716.00;
- (g) 50% of the bonus earned and due January 2021, reduced to reflect contingencies associated with this claim: \$87,500.00 ~~\$175,000.00~~;

less:

- (h) amounts received in respect of the above claims from the insolvencies of the Clover CCAA Applicants the Clover on Yonge Inc. and The Clover on Yonge Limited Partnership, pursuant to a claim approved PricewaterhouseCoopers in its capacity as court-appointed Monitor: \$55,500.00-; and
- (i) amounts expected to be received in respect of the above claims from the insolvencies of 480 Yonge Street Inc. and 480 Yonge Street Limited Partnership (Halo), equal to 55% of the \$205,000 unsecured claim approved PricewaterhouseCoopers in its capacity as court-appointed receiver: \$112,750.00.

2. Total value of the Claims described above is \$734,996.71 ~~\$935,246.71~~.

A. OVERVIEW

3. David Ryan Millar was one of the Cresford group's most senior employees, responsible for overseeing a number of its developments including YSL. Among other achievements, Millar succeeded in obtaining the zoning that allowed the YSL project to be one of the tallest buildings in Canada, increasing its value by millions of dollars.

4. Millar was employed in common by the various Cresford companies for which he worked, including YSL. He was constructively terminated in the summer of 2020 after Cresford failed to pay outstanding employment compensation. As a result, YSL and Millar's other employers in common are jointly and severally liable for his outstanding employment entitlements.

5. PricewaterhouseCoopers (**PwC**) has already approved claims by Millar in insolvency proceedings of related Cresford entities, in which PwC is court-appointed Monitor and Receiver, respectively. Millar has received and will receive partial recovery of the amounts owed to him via those proceedings, both of which provided for partial reimbursement of unsecured creditors. He now submits a claim for the balance.

B. THE CRESFORD GROUP

6. Millar was employed in common by a number of companies, including YSL, until his constructive dismissal, most recently as Vice President, Planning and Development.

7. YSL is part of a commonly owned group of companies and partnerships (together, **Cresford**) engaged in the development, construction, marketing and sale of condominiums in Toronto, Ontario under the business name Cresford.

8. In addition to YSL, Millar worked on real estate projects related to a series of Cresford companies (together with YSL, the **Cresford Employers**). The Cresford Employers controlled Millar's activities and were Millar's employers in common.

9. These common employers, including YSL, are jointly and severally liable for the entitlements owed to Millar under his written employment agreement. The most significant part of Millar's compensation were bonuses, which were to be paid in cash or paid as credits on Millar's purchase of units in Cresford projects.

10. Despite Cresford's repeated assurances, these bonuses were never paid. Millar warned Cresford that he would consider himself to be constructively dismissed if it did not pay the outstanding bonuses. By failing to honour these obligations, Cresford made unilateral changes to Millar's employment that were substantial and detrimental, amounting to constructive dismissal. Millar is accordingly entitled to the contractual damages in lieu of reasonable notice set out in his written employment contract.

C. MILLAR'S EMPLOYMENT BY CRESFORD

11. In 2001, Cresford hired Millar as a Project Coordinator. Millar was promoted to the position of Director of Planning and Development and remained with Cresford for over 10 years.

12. In February 2012, Millar accepted an offer to act as the Vice President of Planning and Development at a competing real estate developer and resigned from Cresford.

13. In 2014, Cresford approached Millar and asked him to return as Vice President of Planning and Development. Based on the compensation and bonuses that Cresford was offering, Millar accepted their offer.

14. Cresford drafted and delivered an employment agreement dated November 5, 2014 to Millar, which he signed without any amendment (the **Employment Agreement**, included as **Attachment 1**). Millar was employed as Cresford's Vice President of Planning and Development pursuant to the Employment Agreement from February 2015 until his recent dismissal, described below.

15. Under the Employment Agreement drafted by Cresford, Millar's employer was identified as "Cresford Developments", which is not a legal entity or registered business name. Rather, it is a generic term applying to the entire Cresford group of companies.

16. In addition to YSL, Millar performed work for the following Cresford companies (together with YSL, defined above as the Cresford Employers) as employers in common, and worked on each of the real estate projects associated with them: The Clover on Yonge Inc. and its associated partnership (**Clover**); Cresford (Rosedale) Developments Inc.; East Downtown Redevelopment Partnership; 33 Yorkville Residences Limited Partnership and 33 Yorkville Residences Inc., its general partner; 480 Yonge Street Limited Partnership and 480 Yonge Street Inc.; 50 Charles Street Limited; 11 Gloucester Street Inc.; 69 Hayden Street Limited; 9615334 Canada Inc.; and Cresford Holdings Ltd.

17. Because Millar worked for all of the Cresford Employers, he was employed in common by them, including YSL, within the meaning set out in *Downtown Eatery (1993) Ltd. v. Ontario*, [2001 CanLII 8538](#) (Ont. C.A.) and *Nortel Networks Corporation (Re)*, [2016 ONSC 6030](#) because:

- (a) The Cresford Employers were under the common control of the same managers, who acted on behalf of each of the Cresford Employers;
- (b) YSL and each of the relevant project companies directed and exercised effective control over his activities relating to the associated real estate projects;
- (c) Cresford held Millar out as a representative of YSL and the relevant project companies in the course of Millar's employment, including during Concord's due diligence on the project;
- (d) Millar signed applications and contracts on behalf of YSL and the relevant project companies;
- (e) Millar's bonus entitlements were specifically linked to milestones related to his work on YSL and the relevant project companies; and
- (f) Millar's bonus entitlements involved credits on units purchased from project companies, obligations that could only be performed by the relevant project company.

18. Each of the Cresford employers, including YSL, is jointly and severally liable for the employment obligations owed to Millar.

19. Millar's primary activities were the planning and development of the condominium developments carried out by various project companies, including YSL. YSL was the only company with the authority and control to direct Millar in carrying out the activities related to the YSL project, in furtherance of its business. Cresford held Millar out as acting on behalf of those project companies. He was the named representative of the YSL project on many core project documents. A small sample of such documents is attached as **Attachment 2**:

- (a) YSL's application to the City of Toronto for a permit to construct the building foundation, signed by Millar as its representative;
- (b) YSL's application to the City of Toronto stating YSL's commitment to obtain a general review of the proposed construction, signed by Millar as its representative;
- (c) YSL's application to the City of Toronto for a permit to construct the building, plumbing and foundation, signed by Millar as its representative;
- (d) a building permit from the City of Toronto, identifying Millar as YSL's agent; and
- (e) a municipal infrastructure agreement between YSL and the City of Toronto, identifying Millar as YSL's point of contact for any relevant notices (under section 11.1 of the agreement).

20. This sample of records should be sufficient to establish that YSL was one of Millar's employers in common. Should the Proposal Trustee have any remaining doubts, Millar would be pleased to provide further information on request.

D. MILLAR'S DUTIES AND COMPENSATION ENTITLEMENTS

21. As Vice President of Planning and Development, Millar was responsible for leading the planning and development of Cresford's real estate projects from inception through to completion and closing. Millar succeeded in obtaining the zoning that allowed the YSL project to be one of the tallest buildings in Canada, increasing its value by millions of dollars. His duties included leading: due diligence efforts; planning and municipal approvals processes to obtain zoning and official plan amendments; the negotiation and execution of complex municipal agreements; and the process of obtaining building permits, construction-related permits, draft plan approval, occupancy and the required registration and severance for project closings.

22. Millar performed these responsibilities for each of the Cresford Employers. In particular, Millar was responsible for planning and development for each of the Clover, Halo, Yorkville, YSL and 59 Hayden condominium projects. Millar also performed various work on the 357 Yonge project (due diligence on the purchase, as well as the project's involvement in the YSL approvals process), the 11 Gloucester project (due diligence on the purchase) and the 69 Hayden property (dealing with municipal matters).

23. In carrying out these responsibilities, Millar acted on behalf of each of the project company Cresford Employers associated with that project. These project companies acted through a common management team, which gave directions to and exercised control over Millar on each project company's behalf. Each of the Cresford Employers were accordingly a common employer of Millar and jointly owed all of an employer's obligations to him, including YSL.

24. At the time of his dismissal, Millar's annual compensation was:

- (a) a salary of \$300,000 per year;
- (b) a car allowance (\$600 per month) and car insurance allowance (\$137.41 per month);
- (c) gas for personal and business use;
- (d) 4 weeks' vacation with pay;
- (e) group benefit coverage; and
- (f) certain project-based bonuses, as described below.

25. An integral part of Millar's employment compensation were significant bonuses, which included both cash bonuses and credits granted on the purchase of units in Cresford condominium projects.

26. For example, as a signing bonus under the Employment Agreement, Cresford granted Millar a \$200,000 credit that could be applied towards the purchase of a Cresford condominium unit in any new development announced after his start date. The Employment Agreement also granted Millar a series of earned cash bonuses that were payable following the registration of various Cresford condominium projects.

27. As Cresford developed new projects, Millar continued to receive project-based bonuses, which increased in amount over time. These bonuses were an essential term of Millar's employment.

28. Millar also entered into agreements of purchase and sale for units in the Clover project (on December 22, 2015) and in the Yorkville project (on May 29, 2018). Millar was offered preferential terms for these purchases as bonus compensation for his work on the projects.

29. To grant these bonuses, Cresford amended the agreements of purchase and sale for the Clover unit (on December 22, 2015 and January 21, 2020) and for the Yorkville unit (on May 29, 2018 and January 21, 2020). As further employment benefits to Millar, these amendments also limited the deposits that Millar was obliged to pay, fixed the maximum amounts of closing adjustments, and recorded credits to Millar against the purchase price (in amount of \$17,596 on the Clover unit and \$23,716 on the Yorkville unit).

30. The agreements of purchase and sale for the Clover unit and for the Yorkville unit, together with the relevant amendments showing the credits on the Clover and Yorkville units, are included as **Attachment 3** and **Attachment 4**.

31. On November 29, 2018, Millar executed an amendment to the Employment Agreement (the **Amending Agreement**, included as **Attachment 5**) that, among other things, confirmed the following earned bonuses (together, the **Bonuses**):

- (a) a \$200,000 cash bonus to be paid within 60 days after the final registration of the declaration of any new developments;
- (b) a credit bonus of \$350,000 to be applied to his purchase of a unit in the Yorkville project;

- (c) a credit bonus of \$200,000 to be applied to his purchase of a unit in the Clover project (being the bonus previously granted in the Employment Agreement, which was applied to a unit in the Clover project);
- (d) cash bonuses of \$100,000 payable 60 days after the final registration of the declaration for each of the Clover, Halo and Yorkville projects;
- (e) a cash bonus of \$250,000 for the YSL project, payable in three \$83,333.33 installments upon the following project milestones: the enactment of the zoning by-law and expiry of appeal period, receipt of the above grade structural building permit, and 60 days after the final registration of the declaration of the condominium.

32. On January 6, 2020, Daniel C. Casey (**Casey**), the principal of Cresford, called a meeting of five senior employees including Millar and granted each of them a further bonus of \$250,000 on behalf of Cresford. He advised that the intention of this bonus was to reward these senior employees for seeing Cresford through “tough times.” By this time, as described below, Cresford had begun to experience financial distress. Casey provided Millar with a cheque for \$75,000 to satisfy part of that bonus amount. He promised that Cresford would pay the remaining bonus amount of \$175,000 one year later, in January 2021.

33. Each of the above bonuses were earned and remained in existence at the time of Millar’s dismissal. In addition, a cash bonus of \$83,333.33 became payable on November 4, 2019 in relation to the YSL project.

34. Millar's cash compensation was paid by EDRP, which acted as a paymaster for the Cresford group, receiving fees from project companies and using those fees to pay, among other things, Cresford's employees. To the best of Millar's knowledge, EDRP has no material assets of its own and carries out no business other than servicing Cresford and its project companies. Bonuses in the form of credits against the purchase of units in Cresford developments were credited by the Cresford company that owned the respective developments.

35. As described in section I below, Cresford and Clover effectively acknowledged that they were employers in common of Millar, by acknowledging Millar's claims for bonuses and other amounts in the Clover and Halo proceedings.

E. CRESFORD'S FINANCIAL DISTRESS AND COMMITMENTS TO HONOUR MILLAR'S BONUSES

36. Over the course of 2019, Cresford began to experience significant financial distress. In early 2020, allegations surfaced of financial irregularities within certain Cresford developments. As a result of these allegations, several of Cresford's secured creditors arranged for an investigation of these allegations and later reported that:

- (a) Cresford had surreptitiously obtained a loan to fulfill its lenders' requirement that Cresford inject equity into the projects, and had then used lender funds to service that secret loan;
- (b) Cresford had maintained two sets of books. One set of books showed costs consistent with the construction budget provided to lenders. A second, secret set of books showed overspending above Cresford's approved construction budgets; and

- (c) Cresford had hidden increased costs by selling units to its suppliers at substantial discounts to their listing prices, without disclosing these adjustments to its lenders.

37. In early March 2020, Cresford began preparing to commence an application for relief under the *Companies' Creditors Arrangement Act*. As Cresford's finances deteriorated, Millar raised concerns with Casey on multiple occasions about whether he would receive his earned Bonuses.

38. Casey provided his personal commitment that Cresford would honour the credits granted on Millar's Clover and Yorkville unit as well as the original purchase prices in Millar's purchase and sale agreements, and that Cresford would pay the outstanding Bonuses that had by then accrued. In particular, Casey assured Millar that Cresford would soon pay a milestone Bonus of \$83,333 for the YSL project (described at subparagraph 23(e) above) that had accrued in November 2019. Millar relied on Casey's commitment, which induced him to continue to work for Cresford.

39. On March 21, 2020, David Mann (**Mann**), Cresford's CFO, advised Millar that his outstanding Bonuses would remain outside of the insolvency process, were on Cresford's account and would be paid. Millar similarly relied on Mann's assurances and continued to work for Cresford. Three days later, Mann confirmed that the outstanding \$83,333.33 Bonus would be paid by April 15, 2020. This email correspondence is included as **Attachment 6**.

40. On March 27, 2020, Cresford's secured creditors obtained orders appointing receivers over the Clover and Halo project companies (in a proceeding with the court file number CV-20-00637301-00CL) and the Yorkville project companies (CV-20-00637297-00CL).

41. After the receivership orders, Millar assisted the receiver on the insolvent projects and continued to work for Cresford on its solvent projects. Among other tasks, Millar represented YSL during Concord's due diligence on the project and sent emails providing Concord with information on YSL's behalf (which can be produced upon request).

42. On March 31, 2020, after the receivership orders were issued, Mann emailed Millar and other employees and confirmed that they would remain employees of Cresford under their current contracts for at least 30 days.

F. FAILURE TO HONOUR MILLAR'S EMPLOYMENT ENTITLEMENTS LEADS TO CONSTRUCTIVE DISMISSAL

43. Following the receivership orders, Millar made repeated requests for Cresford to confirm that his employment entitlements, including his unit credit Bonuses, the purchase prices in the signed purchase and sale agreements, and his cash Bonuses would continue to be honoured. Despite their past assurances, neither Casey, Mann nor Cresford provided the requested confirmation.

44. On April 10, 2020, Millar's counsel sent letters to the monitor and receiver for Clover and Yorkville, PwC, requesting confirmation that his unit credit Bonuses would be honoured in the receivership. In response, PwC offered to pay drastically reduced bonuses to Millar in exchange for his continued work on the project companies in receivership.

45. On May 5, 2020, Millar emailed Casey, Mann and others to advise them that PwC was unwilling to honour his employment agreement and requested that Cresford (that is, those companies in the group not in receivership) honour his employment entitlements.

46. On May 21, 2020, Casey requested that Millar provide urgent assistance to the YSL project. Millar agreed to do so but again requested confirmation that his outstanding Bonuses and entitlements would be honoured. Casey advised that Cresford would provide an offer the next day dealing with Millar's outstanding Bonuses and unit credits.

47. Despite Millar's repeated requests afterwards, Cresford did not provide such an offer and did not confirm what Bonuses and entitlements it would honour. Instead, it made repeated promises that it would deliver offers outlining what it was prepared to pay Millar by a series of deadlines, including May 24, May 26, May 28, June 12 and June 22, 2020. Contrary to these promises, it did not deliver offers by any of these deadlines.

48. By mid-July 2020, Cresford had still not paid Millar's \$83,333.33 Bonus for the YSL project that had been due since November 2019, had not confirmed it would honour his other Bonuses earned and to be earned including unit credits, and had not presented its promised offer for how and when it would pay those amounts or proposed alternative amounts. In addition, Millar learned that Cresford intended not to honour the credits or purchase prices outlined in Millar's purchase and sale agreements against the unit purchases that it had granted him in the Amending Agreement.

49. On July 16, 2020, Millar wrote to Casey and Cresford and advised that he was not prepared to wait any longer for Cresford to honour its commitments, while being asked to continue to work for Cresford (attached as **Attachment 7**). He warned that he would consider himself constructively dismissed if by July 24, 2020, his outstanding \$83,333.33 Bonus was not paid and satisfactory commitments were not received regarding his credits for the units (which had appreciated

considerably in value). He also requested confirmation that his future Bonuses would be paid if and as accrued.

50. On July 17, 2020, counsel for Millar sent a letter to counsel for the CCAA Applicants and requested clarification of how Millar's bonus unit credit on the Clover unit would be treated under the proposed plan of arrangement (included as **Attachment 8**).

51. On July 20, 2020, counsel for the Clover CCAA Applicants sent a letter advising that the plan of arrangement did not compromise any claims by Millar against his employer "Cresford", against whom Millar could claim any related losses (included as **Attachment 9**). Although the Clover CCAA Applicants did not advise which company is Millar's employer "Cresford", this response suggested that the CCAA Applicants would not honour any of the Bonuses owing to Millar, including the bonus unit credit on the Clover unit. The Clover CCAA Applicants did not deny that Millar was owed these bonus credits or other bonuses.

52. Cresford failed to pay Millar's outstanding Bonus or to confirm that it would otherwise honour Millar's employment entitlements by July 24, 2020. Millar therefore confirmed in writing that he had been constructively dismissed and ceased working.

53. Cresford did not deny that it had constructively dismissed Millar in response to his July 16 or July 24, 2020 letters.

54. On August 4, 2020, Millar issued a statement of claim against Cresford seeking damages for breach of contract, wrongful dismissal, and oppression (included as **Attachment 10**). Millar

included YSL as defendants in the action. Cresford has delivered a statement of defence in the action (attached as **Attachment 11**).

G. BREACH OF CONTRACT

55. Under the Employment and Amending Agreements, the Cresford Employers were contractually required to pay or credit to Millar the accrued Bonuses relevant to Millar's claim in this proceeding:

- (a) the cash bonus of \$83,333.33 that accrued on November 4, 2019;
- (b) the credit bonus of \$200,000 on his purchase of the Clover unit;
- (c) the credit bonus of \$350,000 on his purchase of the Yorkville unit;
- (d) the unit credit of \$17,596 on his purchase of the Clover unit;
- (e) the unit credit of \$23,716 on his purchase of the Yorkville unit; and
- (f) the cash bonus of \$175,000 orally promised by Casey.

56. The Cresford Employers – including YSL – have breached their contractual obligations to Millar by failing to pay the \$83,333.33 bonus that was outstanding. As well, they have repudiated their contractual obligation to honour the \$200,000 credit bonus on Millar's Clover unit, the \$350,000 credit bonus on Millar's Yorkville unit, the unit credits on the Clover and Yorkville units, and the additional \$175,000 cash bonus. Millar has suffered damages as a result of these breaches, which deprive him of the compensation that he earned from his past service to the Cresford, including YSL.

H. WRONGFUL DISMISSAL

57. By persistently refusing to honour Millar's employment entitlements, the Cresford Employers and YSL implemented significant changes to Millar's employment. The essential terms and conditions of Millar's employment substantially changed as a consequence of the Cresford Employers and YSL's actions.

58. The Cresford Employers, including YSL, did not consult Millar before implementing these changes. Rather, they continually delayed and reneged on its promises to confirm Millar's contractual entitlements in order to induce him to continue working for the Cresford Employers and YSL.

59. The changes to Millar's employment, imposed by the Cresford Employers and YSL, amount to constructive dismissal. The changes were substantial and detrimental, and entitled Millar to terminate his contract of employment and claim damages in lieu of reasonable notice.

60. The Employment Agreement expressly provided that the Cresford Employers and YSL were entitled to terminate Millar's employment without cause only upon 10 months' notice or bi-monthly pay in lieu of such notice, subject to a 50% reduction in pay in lieu in the event Millar finds alternative employment:

Termination of Employment:

The Employee's employment may be terminated as follows:

...

3. By the Employer without cause upon ten months' notice or, bi-monthly pay in lieu thereof subject to the following. In the event of the employee finding comparable alternative employment, the employee will be paid 50% of the balance owing on the

remainder of the termination payment from the date of commencement of such employment to the end of the notice period herein. The Employee agrees that he will advise the Employer forthwith upon finding such comparable employment.

61. The Cresford Employers and YSL have failed to pay Millar pay in lieu of notice of termination. Accordingly, Millar was entitled to the following damages for wrongful termination:

- (a) \$250,000, for ten months of salary;
- (b) \$7,374.10, for ten months of car and car insurance allowances; and
- (c) \$36,538.46, for ten months of vacation entitlements plus three weeks of vacation accrued to date.

62. In October 2020, Millar found comparable alternative employment. Under the terms of the employment agreement, Millar's contractual entitlement for dismissal was reduced to 50% for the 8 months of the notice period then remaining. Millar is accordingly entitled to \$141,101.38 in damages, which reflects 100% of his contractual entitlement for August and September 2020 (\$58,782.51), 50% of his entitlement for the remaining 8 months (\$117,565.02), and an adjustment for amounts received from PwC for post-filing services.

I. CLAIMS IN OTHER INSOLVENCY PROCEEDINGS

63. Millar filed claims in the Clover CCAA proceeding and Halo receivership that were substantially similar to the claims in this proof of claim.

64. Concord and Cresford acknowledged Millar's claims in the Clover proceeding and consented to PwC approving them. On January 11, 2021, David Gruber advised on behalf of

Clover that it acknowledged Millar's claims for constructive dismissal damages, for bonuses related to the Clover and YSL projects, and for certain other amounts. Mr. Gruber's email acknowledging Millar's claims and Mr. Millar's request for amendment (without attachments) setting out the referenced claims are included as **Attachment 12**.

65. On May 3, 2021, PwC issued notices of revision acknowledging Millar's claims for \$222,000 in the Clover CCAA proceeding and for \$205,000 in the Halo receivership (attached as **Attachment 13**). These approvals reflected at least some amounts for each of the claims asserted here. In doing so, PwC treated Millar as being employed in common by the Cresford Employers, acknowledging his claims that Clover and Halo were jointly liable for bonuses related to other projects.

66. PwC reduced several of Millar's claims where it expected Millar to be paid from other employers in common. In particular, PwC's acknowledgements of Millar's claims did not acknowledge the \$83,333.33 bonus earned for the YSL project. In an email dated May 3, 2021 (attached as **Attachment 14**), PwC advised Millar that Dave Mann, Cresford's CFO, had told PwC on March 24, 2021 that YSL would pay this bonus.

67. PwC accordingly disallowed that claim, on the basis that Millar would recover that YSL's management had represented to PwC that YSL would pay this bonus and that YSL was not insolvent. However, no such payment was made to Millar prior to the NOI in this matter, filed shortly after Mann's assurance to PwC that YSL would pay the bonus.

68. PwC also reduced Millar's claim for the \$175,000 by 50%, to account for contingencies associated with that claim. Millar's corresponding reduction of this claim by 50% to account for

contingencies is without prejudice to his right to claim the full amount of the bonus in other proceedings.

69. Aside from YSL, it appears that there are no remaining Cresford Employers with operating businesses that could satisfy Millar's employment entitlements.

70. Millar agreed to assign his Clover claims to Concord in exchange for 25% of the approved claim amount (which was more than the amount payable to unsecured creditors under the plan of arrangement sanctioned in the Clover CCAA). As a result, Millar has received \$55,500 in respect of his Clover claims.

71. Millar has not yet received any distributions in respect of his Halo claims and has not yet been advised what percentage of unsecured claims will be distributed in that receivership proceeding. Millar is prepared to credit the amount he ultimately receives on account of these claims, if any, against the amount of his claims herein, and will advise the proposal trustee if such amounts are received prior to the completion of this proposal process. Because of the possibility that Millar's Halo distribution amount will not be known before his within claim is valued for distribution purposes, Millar has included an interim credit of \$112,750 in respect of this claim, being 55% of the claim amount. He understands that present estimates are that the distribution will be at this level or slightly above it.

Bankruptcy and Insolvency Act ("Act")

Proof of Claim

(Section 50.1, 81.5, 81.6, Subsections 65.2(4), 81.2(1), 81.3(8), 81.4(8), 102(2), 124(2), 128(1), and Paragraphs 51(1)(e) and 66.14(b) of the Act)

All notices or correspondence regarding this claim must be forwarded to the following address:

Creditor Name:	<u>David Ryan Millar</u>	Telephone:	<u>(416) 768-9994</u>
Address:	<u>c/o James Gibson, Naymark Law</u>	Fax:	<u>(647) 660-5060</u>
	<u>171 John Street, Suite 101,</u>	Email:	<u>jgibson@naymarklaw.com</u>
	<u>Toronto, ON, M5T 1X3</u>		
Account No.:	<u>Nil</u>		

In the matter of the bankruptcy (or the proposal, or the receivership) of YSL Residences Inc. and YG Limited Partnership (*name of debtor*) of the City of Toronto, Ontario (*city and province*) and the claim of David Ryan Millar, creditor.

I, David Ryan Millar (*name of creditor or representative of the creditor*), of City of Toronto, Ontario (*city and province*), do hereby certify:

1. That I am a creditor of the above-named debtor (~~or that I am _____ (*state position or title*) of _____ (*name of creditor*)~~).
2. That I have knowledge of all the circumstances connected with the claim referred to below.
3. That the debtor was, at the date of bankruptcy, (or the date of the receivership, or in the case of a proposal, the date of the notice of intention or of the proposal, if no notice of intention was filed), namely the 30th day of April, 2021, and still is, indebted to the creditor in the sum of **\$935,246.71**, as specified in the statement of account (or affidavit) attached and marked **Schedule "A"**, after deducting any counterclaims to which the debtor is entitled. (The attached statement of account or affidavit must specify the vouchers or other evidence in support of the claim.)
4. (Check and complete appropriate category.)

A. UNSECURED CLAIM (AFFECTED CLAIM) OF \$935,246.71 (other than as a customer contemplated by Section 262 of the Act)
That in respect of this debt, I do not hold any assets of the debtor as security and
(Check appropriate description.)

Regarding the amount of \$933,246.71, I do not claim a right to a priority.

Regarding the amount of \$2,000.00, I claim a right to a priority under Section 136 of the Act.
(Set out on an attached sheet details to support priority claim.)
See **Schedule "B"**.

B. SECURED CLAIM OF \$0.00

That in respect of this debt, I hold assets of the debtor valued at \$ _____ as security, particulars of which are as follows:

(Give full particulars of the security, including the date on which the security was given and the value at which you assess the security, and attach a copy of the security documents.)

C. CONSTRUCTION LIEN CLAIM OF \$0.00

That in respect of this debt I have registered a lien on title to the Debtors' real property in accordance with the *Construction Act* (Ontario), particulars of which are as follows:

(Give full particulars of the lien, including the date on which the lien was registered and the value secured by such lien, and attach a copy of any relevant documents, including any statement of claim).

1. That, to the best of my knowledge, I am (or the above-named creditor is) (or am not or is not) related to the debtor within the meaning of Section 4 of the Act, and have (or has) (or have not or has not) dealt with the debtor in a non- arm's-length manner.
2. That the following are the payments that I have received from, the credits that I have allowed to, and the transfers at undervalue within the meaning of Subsection 2(1) of the Act that I have been privy to or a party to with the debtor within the three months (or, if the creditor and the debtor are related within the meaning of Section 4 of the Act or were not dealing with each other at arm's length, within the 12 months) immediately before the date of the initial bankruptcy event within the meaning of Subsection 2(1) of the Act: (Provide details of payments, credits and transfers at undervalue.)

Dated at City of Toronto, Ontario, this 10 day of June, 2021.


Witness Denise Millar


Creditor Authorized Signatory
David Ryan Millar

NOTE: If an affidavit is attached, it must have been made before a person qualified to take affidavits.

WARNINGS: A trustee may, pursuant to Subsection 128(3) of the Act, redeem a security on payment to the secured creditor of the debt or the value of the security as assessed, in a proof of security, by the secured creditor.

Subsection 201(1) of the Act provides severe penalties for making any false claim, proof, declaration or statement of account.

DIRECTIONS FOR COMPLETION OF THIS FORM ARE ON THE REVERSE SIDE

CONDITIONAL CLAIM ADDENDUM

By checking the box below, you are electing for your Claim to be treated as a Conditional Claim (as defined in the Proposal). By electing for your claim to be treated as a Conditional Claim, you are recognizing that:

- a) One or more contractual conditions in your arrangements with the Company were not satisfied as at April 30, 2021 (referred to in the Proposal as "Conditional Claim Conditions");
- b) You are undertaking to complete all Conditional Claim Conditions and provide proof of such completion by no later than the Conditional Claim Completion Deadline; and
- c) You understand that the failure to complete all Conditional Claim Conditions by the Conditional Claim Completion Deadline will result in your Claim being fully, finally and irrevocably disallowed.

I hereby elect for my Claim to be treated as a Conditional Claim:

Creditor Authorized Signatory

TAB A

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
COMMERCIAL LIST

IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY
ACT, R.S.C. 1985, C. B-3, AS AMENDED

IN THE MATTER OF THE NOTICES OF INTENTION TO
MAKE A PROPOSAL OF YG LIMITED PARTNERSHIP
AND YSL RESIDENCES INC.

Applicants

AFFIDAVIT OF DAVID RYAN MILLAR
(Sworn on June 10, 2021)

I, DAVID RYAN MILLAR, of the City of Toronto, Ontario, MAKE OATH AND SAY:

1. I am the creditor, and as such have knowledge of the matters contained in this affidavit. Where my knowledge is based on information from other sources, I state the source of that information and believe the information to be true.
2. I confirm that the information contained in the particulars of claim attached as **Exhibit "A"**, together with the supporting attachments, is true and accurate and I adopt it for the purposes of this affidavit.

3. I make this affidavit in support of a proof of claim in this proceeding, and for no other or improper purpose.

SWORN by videoconference technology by the deponent, located in the City of Toronto, Ontario, before the commissioner, located in the City of Toronto, Ontario in accordance with O. Reg. 431/20, Adminstrating Oath Remotely on June 10, 2021



Commissioner for Taking Affidavits
JAMES GIBSON

DAVID RYAN MILLAR

THIS IS EXHIBIT "A" REFERRED TO
IN THE AFFIDAVIT OF DAVID RYAN MILLAR
SWORN BEFORE ME, THIS 10TH DAY OF JUNE, 2021

A handwritten signature in black ink, appearing to read "J.G.", positioned above a horizontal line.

JAMES GIBSON

A Commissioner Etc.

EXHIBIT “A” – PARTICULARS OF PROOF OF CLAIM
--

1. THE CLAIMS (together, the **Claims**) as against YG Limited Partnership and YSL Residences Inc. (together, **YSL**) are:

- (a) damages for constructive dismissal: \$141,101.38;
 - (b) bonus accrued in November 2019 related to the YSL project: \$83,333.33;
 - (c) bonus unit credit for the condominium unit in the Clover project (the **Clover unit**): \$200,000.00;
 - (d) bonus unit credit for the condominium unit in the 33 Yorkville project (the **Yorkville unit**): \$350,000;
 - (e) unit credit for the Clover unit granted as an employment benefit: \$17,596.00;
 - (f) unit credit for the Yorkville unit granted as an employment benefit: \$23,716.00;
 - (g) bonus earned and due January 2021: \$175,000.00;
- less:
- (h) amounts received in respect of the above claims from the insolvencies of the Clover CCAA Applicants the Clover on Yonge Inc. and The Clover on Yonge Limited Partnership, pursuant to a claim approved PricewaterhouseCoopers in its capacity as court-appointed Monitor: \$55,500.

2. Total value of the Claims described above is \$935,246.71.

A. OVERVIEW

3. David Ryan Millar was one of the Cresford group’s most senior employees, responsible for overseeing a number of its developments including YSL. Among other achievements, Millar

succeeded in obtaining the zoning that allowed the YSL project to be one of the tallest buildings in Canada, increasing its value by millions of dollars.

4. Millar was employed in common by the various Cresford companies for which he worked, including YSL. He was constructively terminated in the summer of 2020 after Cresford failed to pay outstanding employment compensation. As a result, YSL and Millar's other employers in common are jointly and severally liable for his outstanding employment entitlements.

5. PricewaterhouseCoopers (**PwC**) has already approved claims by Millar in insolvency proceedings of related Cresford entities, in which PwC is court-appointed Monitor and Receiver, respectively. Millar has received and will receive partial recovery of the amounts owed to him via those proceedings, both of which provided for partial reimbursement of unsecured creditors. He now submits a claim for the balance.

B. THE CRESFORD GROUP

6. Millar was employed in common by a number of companies, including YSL, until his constructive dismissal, most recently as Vice President, Planning and Development.

7. YSL is part of a commonly owned group of companies and partnerships (together, **Cresford**) engaged in the development, construction, marketing and sale of condominiums in Toronto, Ontario under the business name Cresford.

8. In addition to YSL, Millar worked on real estate projects related to a series of Cresford companies (together with YSL, the **Cresford Employers**). The Cresford Employers controlled Millar's activities and were Millar's employers in common.

9. These common employers, including YSL, are jointly and severally liable for the entitlements owed to Millar under his written employment agreement. The most significant part of Millar's compensation were bonuses, which were to be paid in cash or paid as credits on Millar's purchase of units in Cresford projects.

10. Despite Cresford's repeated assurances, these bonuses were never paid. Millar warned Cresford that he would consider himself to be constructively dismissed if it did not pay the outstanding bonuses. By failing to honour these obligations, Cresford made unilateral changes to Millar's employment that were substantial and detrimental, amounting to constructive dismissal. Millar is accordingly entitled to the contractual damages in lieu of reasonable notice set out in his written employment contract.

C. MILLAR'S EMPLOYMENT BY CRESFORD

11. In 2001, Cresford hired Millar as a Project Coordinator. Millar was promoted to the position of Director of Planning and Development and remained with Cresford for over 10 years.

12. In February 2012, Millar accepted an offer to act as the Vice President of Planning and Development at a competing real estate developer and resigned from Cresford.

13. In 2014, Cresford approached Millar and asked him to return as Vice President of Planning and Development. Based on the compensation and bonuses that Cresford was offering, Millar accepted their offer.

14. Cresford drafted and delivered an employment agreement dated November 5, 2014 to Millar, which he signed without any amendment (the **Employment Agreement**, included as

Attachment 1). Millar was employed as Cresford’s Vice President of Planning and Development pursuant to the Employment Agreement from February 2015 until his recent dismissal, described below.

15. Under the Employment Agreement drafted by Cresford, Millar’s employer was identified as “Cresford Developments”, which is not a legal entity or registered business name. Rather, it is a generic term applying to the entire Cresford group of companies.

16. In addition to YSL, Millar performed work for the following Cresford companies (together with YSL, defined above as the Cresford Employers) as employers in common, and worked on each of the real estate projects associated with them: The Clover on Yonge Inc. and its associated partnership (**Clover**); Cresford (Rosedale) Developments Inc.; East Downtown Redevelopment Partnership; 33 Yorkville Residences Limited Partnership and 33 Yorkville Residences Inc., its general partner; 480 Yonge Street Limited Partnership and 480 Yonge Street Inc.; 50 Charles Street Limited; 11 Gloucester Street Inc.; 69 Hayden Street Limited; 9615334 Canada Inc.; and Cresford Holdings Ltd.

17. Because Millar worked for all of the Cresford Employers, he was employed in common by them, including YSL, within the meaning set out in *Downtown Eatery (1993) Ltd. v. Ontario*, [2001 CanLII 8538](#) (Ont. C.A.) and *Nortel Networks Corporation (Re)*, [2016 ONSC 6030](#) because:

- (a) The Cresford Employers were under the common control of the same managers, who acted on behalf of each of the Cresford Employers;

- (b) YSL and each of the relevant project companies directed and exercised effective control over his activities relating to the associated real estate projects;
- (c) Cresford held Millar out as a representative of YSL and the relevant project companies in the course of Millar's employment, including during Concord's due diligence on the project;
- (d) Millar signed applications and contracts on behalf of YSL and the relevant project companies;
- (e) Millar's bonus entitlements were specifically linked to milestones related to his work on YSL and the relevant project companies; and
- (f) Millar's bonus entitlements involved credits on units purchased from project companies, obligations that could only be performed by the relevant project company.

18. Each of the Cresford employers, including YSL, is jointly and severally liable for the employment obligations owed to Millar.

19. Millar's primary activities were the planning and development of the condominium developments carried out by various project companies, including YSL. YSL was the only company with the authority and control to direct Millar in carrying out the activities related to the YSL project, in furtherance of its business. Cresford held Millar out as acting on behalf of those project companies. He was the named representative of the YSL project on many core project documents. A small sample of such documents is attached as **Attachment 2**:

- (a) YSL's application to the City of Toronto for a permit to construct the building foundation, signed by Millar as its representative;
- (b) YSL's application to the City of Toronto stating YSL's commitment to obtain a general review of the proposed construction, signed by Millar as its representative;
- (c) YSL's application to the City of Toronto for a permit to construct the building, plumbing and foundation, signed by Millar as its representative;
- (d) a building permit from the City of Toronto, identifying Millar as YSL's agent; and
- (e) a municipal infrastructure agreement between YSL and the City of Toronto, identifying Millar as YSL's point of contact for any relevant notices (under section 11.1 of the agreement).

20. This sample of records should be sufficient to establish that YSL was one of Millar's employers in common. Should the Proposal Trustee have any remaining doubts, Millar would be pleased to provide further information on request.

D. MILLAR'S DUTIES AND COMPENSATION ENTITLEMENTS

21. As Vice President of Planning and Development, Millar was responsible for leading the planning and development of Cresford's real estate projects from inception through to completion and closing. Millar succeeded in obtaining the zoning that allowed the YSL project to be one of the tallest buildings in Canada, increasing its value by millions of dollars. His duties included leading: due diligence efforts; planning and municipal approvals processes to obtain zoning and

official plan amendments; the negotiation and execution of complex municipal agreements; and the process of obtaining building permits, construction-related permits, draft plan approval, occupancy and the required registration and severance for project closings.

22. Millar performed these responsibilities for each of the Cresford Employers. In particular, Millar was responsible for planning and development for each of the Clover, Halo, Yorkville, YSL and 59 Hayden condominium projects. Millar also performed various work on the 357 Yonge project (due diligence on the purchase, as well as the project's involvement in the YSL approvals process), the 11 Gloucester project (due diligence on the purchase) and the 69 Hayden property (dealing with municipal matters).

23. In carrying out these responsibilities, Millar acted on behalf of each of the project company Cresford Employers associated with that project. These project companies acted through a common management team, which gave directions to and exercised control over Millar on each project company's behalf. Each of the Cresford Employers were accordingly a common employer of Millar and jointly owed all of an employer's obligations to him, including YSL.

24. At the time of his dismissal, Millar's annual compensation was:

- (a) a salary of \$300,000 per year;
- (b) a car allowance (\$600 per month) and car insurance allowance (\$137.41 per month);
- (c) gas for personal and business use;
- (d) 4 weeks' vacation with pay;

- (e) group benefit coverage; and
- (f) certain project-based bonuses, as described below.

25. An integral part of Millar's employment compensation were significant bonuses, which included both cash bonuses and credits granted on the purchase of units in Cresford condominium projects.

26. For example, as a signing bonus under the Employment Agreement, Cresford granted Millar a \$200,000 credit that could be applied towards the purchase of a Cresford condominium unit in any new development announced after his start date. The Employment Agreement also granted Millar a series of earned cash bonuses that were payable following the registration of various Cresford condominium projects.

27. As Cresford developed new projects, Millar continued to receive project-based bonuses, which increased in amount over time. These bonuses were an essential term of Millar's employment.

28. Millar also entered into agreements of purchase and sale for units in the Clover project (on December 22, 2015) and in the Yorkville project (on May 29, 2018). Millar was offered preferential terms for these purchases as bonus compensation for his work on the projects.

29. To grant these bonuses, Cresford amended the agreements of purchase and sale for the Clover unit (on December 22, 2015 and January 21, 2020) and for the Yorkville unit (on May 29, 2018 and January 21, 2020). As further employment benefits to Millar, these amendments also limited the deposits that Millar was obliged to pay, fixed the maximum amounts of closing

adjustments, and recorded credits to Millar against the purchase price (in amount of \$17,596 on the Clover unit and \$23,716 on the Yorkville unit).

30. The agreements of purchase and sale for the Clover unit and for the Yorkville unit, together with the relevant amendments showing the credits on the Clover and Yorkville units, are included as **Attachment 3** and **Attachment 4**.

31. On November 29, 2018, Millar executed an amendment to the Employment Agreement (the **Amending Agreement**, included as **Attachment 5**) that, among other things, confirmed the following earned bonuses (together, the **Bonuses**):

- (a) a \$200,000 cash bonus to be paid within 60 days after the final registration of the declaration of any new developments;
- (b) a credit bonus of \$350,000 to be applied to his purchase of a unit in the Yorkville project;
- (c) a credit bonus of \$200,000 to be applied to his purchase of a unit in the Clover project (being the bonus previously granted in the Employment Agreement, which was applied to a unit in the Clover project);
- (d) cash bonuses of \$100,000 payable 60 days after the final registration of the declaration for each of the Clover, Halo and Yorkville projects;
- (e) a cash bonus of \$250,000 for the YSL project, payable in three \$83,333.33 installments upon the following project milestones: the enactment of the zoning by-law and expiry of appeal period, receipt of the above grade structural building

permit, and 60 days after the final registration of the declaration of the condominium.

32. On January 6, 2020, Daniel C. Casey (**Casey**), the principal of Cresford, called a meeting of five senior employees including Millar and granted each of them a further bonus of \$250,000 on behalf of Cresford. He advised that the intention of this bonus was to reward these senior employees for seeing Cresford through “tough times.” By this time, as described below, Cresford had begun to experience financial distress. Casey provided Millar with a cheque for \$75,000 to satisfy part of that bonus amount. He promised that Cresford would pay the remaining bonus amount of \$175,000 one year later, in January 2021.

33. Each of the above bonuses were earned and remained in existence at the time of Millar’s dismissal. In addition, a cash bonus of \$83,333.33 became payable on November 4, 2019 in relation to the YSL project.

34. Millar’s cash compensation was paid by EDRP, which acted as a paymaster for the Cresford group, receiving fees from project companies and using those fees to pay, among other things, Cresford’s employees. To the best of Millar’s knowledge, EDRP has no material assets of its own and carries out no business other than servicing Cresford and its project companies. Bonuses in the form of credits against the purchase of units in Cresford developments were credited by the Cresford company that owned the respective developments.

35. As described in section I below, Cresford and Clover effectively acknowledged that they were employers in common of Millar, by acknowledging Millar’s claims for bonuses and other amounts in the Clover and Halo proceedings.

E. CRESFORD'S FINANCIAL DISTRESS AND COMMITMENTS TO HONOUR MILLAR'S BONUSES

36. Over the course of 2019, Cresford began to experience significant financial distress. In early 2020, allegations surfaced of financial irregularities within certain Cresford developments. As a result of these allegations, several of Cresford's secured creditors arranged for an investigation of these allegations and later reported that:

- (a) Cresford had surreptitiously obtained a loan to fulfill its lenders' requirement that Cresford inject equity into the projects, and had then used lender funds to service that secret loan;
- (b) Cresford had maintained two sets of books. One set of books showed costs consistent with the construction budget provided to lenders. A second, secret set of books showed overspending above Cresford's approved construction budgets; and
- (c) Cresford had hidden increased costs by selling units to its suppliers at substantial discounts to their listing prices, without disclosing these adjustments to its lenders.

37. In early March 2020, Cresford began preparing to commence an application for relief under the *Companies' Creditors Arrangement Act*. As Cresford's finances deteriorated, Millar raised concerns with Casey on multiple occasions about whether he would receive his earned Bonuses.

38. Casey provided his personal commitment that Cresford would honour the credits granted on Millar's Clover and Yorkville unit as well as the original purchase prices in Millar's purchase and sale agreements, and that Cresford would pay the outstanding Bonuses that had by then accrued. In particular, Casey assured Millar that Cresford would soon pay a milestone Bonus of

\$83,333 for the YSL project (described at subparagraph 23(e) above) that had accrued in November 2019. Millar relied on Casey's commitment, which induced him to continue to work for Cresford.

39. On March 21, 2020, David Mann (**Mann**), Cresford's CFO, advised Millar that his outstanding Bonuses would remain outside of the insolvency process, were on Cresford's account and would be paid. Millar similarly relied on Mann's assurances and continued to work for Cresford. Three days later, Mann confirmed that the outstanding \$83,333.33 Bonus would be paid by April 15, 2020. This email correspondence is included as **Attachment 6**.

40. On March 27, 2020, Cresford's secured creditors obtained orders appointing receivers over the Clover and Halo project companies (in a proceeding with the court file number CV-20-00637301-00CL) and the Yorkville project companies (CV-20-00637297-00CL).

41. After the receivership orders, Millar assisted the receiver on the insolvent projects and continued to work for Cresford on its solvent projects. Among other tasks, Millar represented YSL during Concord's due diligence on the project and sent emails providing Concord with information on YSL's behalf (which can be produced upon request).

42. On March 31, 2020, after the receivership orders were issued, Mann emailed Millar and other employees and confirmed that they would remain employees of Cresford under their current contracts for at least 30 days.

F. FAILURE TO HONOUR MILLAR'S EMPLOYMENT ENTITLEMENTS LEADS TO CONSTRUCTIVE DISMISSAL

43. Following the receivership orders, Millar made repeated requests for Cresford to confirm that his employment entitlements, including his unit credit Bonuses, the purchase prices in the signed purchase and sale agreements, and his cash Bonuses would continue to be honoured. Despite their past assurances, neither Casey, Mann nor Cresford provided the requested confirmation.

44. On April 10, 2020, Millar's counsel sent letters to the monitor and receiver for Clover and Yorkville, PwC, requesting confirmation that his unit credit Bonuses would be honoured in the receivership. In response, PwC offered to pay drastically reduced bonuses to Millar in exchange for his continued work on the project companies in receivership.

45. On May 5, 2020, Millar emailed Casey, Mann and others to advise them that PwC was unwilling to honour his employment agreement and requested that Cresford (that is, those companies in the group not in receivership) honour his employment entitlements.

46. On May 21, 2020, Casey requested that Millar provide urgent assistance to the YSL project. Millar agreed to do so but again requested confirmation that his outstanding Bonuses and entitlements would be honoured. Casey advised that Cresford would provide an offer the next day dealing with Millar's outstanding Bonuses and unit credits.

47. Despite Millar's repeated requests afterwards, Cresford did not provide such an offer and did not confirm what Bonuses and entitlements it would honour. Instead, it made repeated promises that it would deliver offers outlining what it was prepared to pay Millar by a series of

deadlines, including May 24, May 26, May 28, June 12 and June 22, 2020. Contrary to these promises, it did not deliver offers by any of these deadlines.

48. By mid-July 2020, Cresford had still not paid Millar's \$83,333.33 Bonus for the YSL project that had been due since November 2019, had not confirmed it would honour his other Bonuses earned and to be earned including unit credits, and had not presented its promised offer for how and when it would pay those amounts or proposed alternative amounts. In addition, Millar learned that Cresford intended not to honour the credits or purchase prices outlined in Millar's purchase and sale agreements against the unit purchases that it had granted him in the Amending Agreement.

49. On July 16, 2020, Millar wrote to Casey and Cresford and advised that he was not prepared to wait any longer for Cresford to honour its commitments, while being asked to continue to work for Cresford (attached as **Attachment 7**). He warned that he would consider himself constructively dismissed if by July 24, 2020, his outstanding \$83,333.33 Bonus was not paid and satisfactory commitments were not received regarding his credits for the units (which had appreciated considerably in value). He also requested confirmation that his future Bonuses would be paid if and as accrued.

50. On July 17, 2020, counsel for Millar sent a letter to counsel for the CCAA Applicants and requested clarification of how Millar's bonus unit credit on the Clover unit would be treated under the proposed plan of arrangement (included as **Attachment 8**).

51. On July 20, 2020, counsel for the Clover CCAA Applicants sent a letter advising that the plan of arrangement did not compromise any claims by Millar against his employer "Cresford",

against whom Millar could claim any related losses (included as **Attachment 9**). Although the Clover CCAA Applicants did not advise which company is Millar's employer "Cresford", this response suggested that the CCAA Applicants would not honour any of the Bonuses owing to Millar, including the bonus unit credit on the Clover unit. The Clover CCAA Applicants did not deny that Millar was owed these bonus credits or other bonuses.

52. Cresford failed to pay Millar's outstanding Bonus or to confirm that it would otherwise honour Millar's employment entitlements by July 24, 2020. Millar therefore confirmed in writing that he had been constructively dismissed and ceased working.

53. Cresford did not deny that it had constructively dismissed Millar in response to his July 16 or July 24, 2020 letters.

54. On August 4, 2020, Millar issued a statement of claim against Cresford seeking damages for breach of contract, wrongful dismissal, and oppression (included as **Attachment 10**). Millar included YSL as defendants in the action. Cresford has delivered a statement of defence in the action (attached as **Attachment 11**).

G. BREACH OF CONTRACT

55. Under the Employment and Amending Agreements, the Cresford Employers were contractually required to pay or credit to Millar the accrued Bonuses relevant to Millar's claim in this proceeding:

- (a) the cash bonus of \$83,333.33 that accrued on November 4, 2019;
- (b) the credit bonus of \$200,000 on his purchase of the Clover unit;

- (c) the credit bonus of \$350,000 on his purchase of the Yorkville unit;
- (d) the unit credit of \$17,596 on his purchase of the Clover unit;
- (e) the unit credit of \$23,716 on his purchase of the Yorkville unit; and
- (f) the cash bonus of \$175,000 orally promised by Casey.

56. The Cresford Employers – including YSL – have breached their contractual obligations to Millar by failing to pay the \$83,333.33 bonus that was outstanding. As well, they have repudiated their contractual obligation to honour the \$200,000 credit bonus on Millar’s Clover unit, the \$350,000 credit bonus on Millar’s Yorkville unit, and the additional \$175,000 cash bonus. Millar has suffered damages as a result of these breaches, which deprive him of the compensation that he earned from his past service to the Cresford, including YSL.

H. WRONGFUL DISMISSAL

57. By persistently refusing to honour Millar’s employment entitlements, the Cresford Employers and YSL implemented significant changes to Millar’s employment. The essential terms and conditions of Millar’s employment substantially changed as a consequence of the Cresford Employers and YSL’s actions.

58. The Cresford Employers, including YSL, did not consult Millar before implementing these changes. Rather, they continually delayed and reneged on its promises to confirm Millar’s contractual entitlements in order to induce him to continue working for the Cresford Employers and YSL.

59. The changes to Millar's employment, imposed by the Cresford Employers and YSL, amount to constructive dismissal. The changes were substantial and detrimental, and entitled Millar to terminate his contract of employment and claim damages in lieu of reasonable notice.

60. The Employment Agreement expressly provided that the Cresford Employers and YSL were entitled to terminate Millar's employment without cause only upon 10 months' notice or bi-monthly pay in lieu of such notice, subject to a 50% reduction in pay in lieu in the event Millar finds alternative employment:

Termination of Employment:

The Employee's employment may be terminated as follows:

...

3. By the Employer without cause upon ten months' notice or, bi-monthly pay in lieu thereof subject to the following. In the event of the employee finding comparable alternative employment, the employee will be paid 50% of the balance owing on the remainder of the termination payment from the date of commencement of such employment to the end of the notice period herein. The Employee agrees that he will advise the Employer forthwith upon finding such comparable employment.

61. The Cresford Employers and YSL have failed to pay Millar pay in lieu of notice of termination. Accordingly, Millar was entitled to the following damages for wrongful termination:

- (a) \$250,000, for ten months of salary;
- (b) \$7,374.10, for ten months of car and car insurance allowances; and
- (c) \$36,538.46, for ten months of vacation entitlements plus three weeks of vacation accrued to date.

62. In October 2020, Millar found comparable alternative employment. Under the terms of the employment agreement, Millar's contractual entitlement for dismissal was reduced to 50% for the 8 months of the notice period then remaining. Millar is accordingly entitled to \$141,101.38 in damages, which reflects 100% of his contractual entitlement for August and September 2020 (\$58,782.51), 50% of his entitlement for the remaining 8 months (\$117,565.02), and an adjustment for amounts received from PwC for post-filing services.

I. CLAIMS IN OTHER INSOLVENCY PROCEEDINGS

63. Millar filed claims in the Clover CCAA proceeding and Halo receivership that were substantially similar to the claims in this proof of claim.

64. Concord and Cresford acknowledged Millar's claims in the Clover proceeding and consented to PwC approving them. On January 11, 2021, David Gruber advised on behalf of Clover that it acknowledged Millar's claims for constructive dismissal damages, for bonuses related to the Clover and YSL projects, and for certain other amounts. Mr. Gruber's email acknowledging Millar's claims and Mr. Millar's request for amendment (without attachments) setting out the referenced claims are included as **Attachment 12**.

65. On May 3, 2021, PwC issued notices of revision acknowledging Millar's claims for \$222,000 in the Clover CCAA proceeding and for \$205,000 in the Halo receivership (attached as **Attachment 13**). These approvals reflected at least some amounts for each of the claims asserted here. In doing so, PwC treated Millar as being employed in common by the Cresford Employers, acknowledging his claims that Clover and Halo were jointly liable for bonuses related to other projects.

66. PwC reduced several of Millar's claims where it expected Millar to be paid from other employers in common. In particular, PwC's acknowledgements of Millar's claims did not acknowledge the \$83,333.33 bonus earned for the YSL project. In an email dated May 3, 2021 (attached as **Attachment 14**), PwC advised Millar that Dave Mann, Cresford's CFO, had told PwC on March 24, 2021 that YSL would pay this bonus.

67. PwC accordingly disallowed that claim, on the basis that Millar would recover that YSL's management had represented to PwC that YSL would pay this bonus and that YSL was not insolvent. However, no such payment was made to Millar prior to the NOI in this matter, filed shortly after Mann's assurance to PwC that YSL would pay the bonus.

68. Aside from YSL, it appears that there are no remaining Cresford Employers with operating businesses that could satisfy Millar's employment entitlements.

69. Millar agreed to assign his Clover claims to Concord in exchange for 25% of the approved claim amount (which was more than the amount payable to unsecured creditors under the plan of arrangement sanctioned in the Clover CCAA). As a result, Millar has received \$55,500 in respect of his Clover claims.

70. Millar has not yet received any distributions in respect of his Halo claims and has not yet been advised what percentage of unsecured claims will be distributed in that receivership proceeding. Millar is prepared to credit the amount he ultimately receives on account of these claims, if any, against the amount of his claims herein, and will advise the proposal trustee if such amounts are received prior to the completion of this proposal process.

Appendix 1

THIS AGREEMENT, made as of 5th day of November, 2014,

BETWEEN:

Cresford Developments

(the "Employer")

-and-

Ryan Millar

(the "Employee")

The Employee and the Employer wish to enter into an employment agreement governing the terms and conditions of employment.

THEREFORE THE EMPLOYER AND THE EMPLOYEE AGREE AS FOLLOWS:

TITLE:

The Employer will employ the Employee in the position of Vice President of Planning and Development, effective immediately from signing of this agreement. Salary start date to be determined, employee to give up to 3 and half months notice to current Employer and put the start date in writing.

Duties and Responsibilities:

The duties and responsibilities of the position have been determined and agreed upon by the Employer and the Employee which form schedule "A" of this agreement. The duties may be amended from time to time by mutual agreement.

Salary:

The Salary of the Employee will be \$225,000 per annum, payable bi-weekly less applicable statutory deductions. The salary of the employee will increase 3% per annum to a maximum of \$300,000.00. In addition, the Employee will participate in the group benefit plan provided by the Employer as amended from time to time. The Employee will be entitled to leave as required for absence due to illness.

The Employee will receive a bonus at the registration of the condominium declaration of each development based on the agreed process that takes into account the performance of the specific duties on the Employee as outlined in schedule "B" of this agreement.

Other Benefits:

The Employer will pay the Employee a monthly vehicle allowance of \$400 plus the cost of insurance and gas for personal and business use (less statutory deductions). The Employee will be responsible for all other costs of his vehicle. The Employer will pay the monthly allowance on a bi-monthly basis.

The Employer will provide a cellular phone to the Employee.

The Employer will reimburse for all reasonable travel and other business expenses incurred while carrying out his responsibilities on behalf of the Employer, upon presentation of appropriate receipts for the expenses claimed.

The Employer will reimburse the Employee for the cost of memberships in business related professional associations, provided these membership fees are approved in advance by the Employer.

Annual Leave:

The Employee is entitled to 4 weeks' vacation with pay.

Performance Review:

The performance of the Employee will be reviewed on an annual basis based on criteria agreed upon by the Employee and the Employer at the beginning of the year subject to review, and based on the agreed duties to be performed by the Employee as outlined in schedule "A".

The Employees annual performance will be reviewed at the end of each calendar year and at that time the Employer and the Employee may make amendments to this contract and to compensation at their mutual agreement.

Termination of Employment:

The Employee's employment may be terminated as follows:

1. By the Employee at any time upon providing the employer with 6 weeks' notice in writing; or
2. By the Employer at any time for just cause, without notice; or
3. By the Employer without cause upon ten months notice or, bi-monthly pay in lieu thereof subject to the following. In the event of the employee finding comparable alternative employment, the employee will be paid 50% of the balance owing on the remainder of the termination payment from the date of commencement of such employment to the end of the notice period herein. The Employee agrees that he will advise the Employer forthwith upon finding such comparable employment.

Confidential Information:

It is essential to the success of the Employer that the business and affairs of the Employer be kept in the strictest confidence. Therefore, the Employee shall not at any time nor in any manner, except where authorized or required by law or by the Employer, divulge, disclose or communicate to any person, firm or corporation any information concerning any matters affecting or relating to the enterprise of the Employer, including without limiting the generality of the foregoing, any information concerning the Employers products and product designs, customer lists, the prices it obtains of has obtained or has obtained from the sale of, or at which it sells or has sold its products, types and kinds of raw materials used by it, the suppliers and costs thereof, the manner of its operation, its marketing, product development and other plans, its manufacturing and other processes and any financial affairs of the Employer.

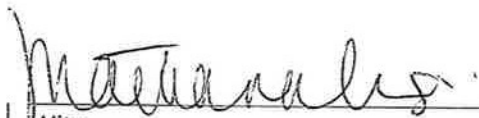
Company Property:

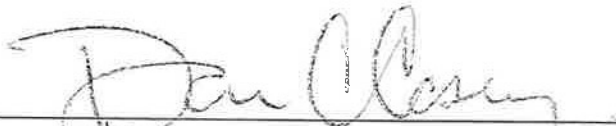
The Employee agrees that upon termination of his employment, all property belonging to Employer will be returned immediately.


Amendment of Agreement:


Any amendment to this agreement must be in writing and signed by both parties.

Dated at Toronto this 5th day of November, 2014


Witness


Per: Dan Casey, President & C.E.O "Employer"


Witness


Per: Ryan Millar "Employee"

Schedule A

Duties and Responsibilities

- Assist with due diligence on potential sites and preliminary project pro-formas (municipal fees, levies, zoning comfort, drilling, and other such tasks).
- Selection, scope definition and fee proposal negotiation for project consultants with respect to municipal approvals and working drawings.
- Involved in conceptual design and lead in planning objectives in coordination with management team.
- Selection and securing of negotiated proposals for legal, zoning, condo doc consultants (as needed).
- Co-ordination/ preparation of condominium documents assist.
- Provide partnership/ management updates and reports on municipal progress and scheduling (if required). Provide the same to financial institutions as required.
- Manage all re-zoning activities and provide schedules for the management team as needed.
- Carry out all site plan processes including negotiating all municipal and government requirements.
- Deal with all municipal and regulatory departments, politicians and rate payers.
- Oversee agreements – easements, cost sharing, encroachments, tiebacks, air rights, public art, heritage etc.
- Establish the overall building project phasing program with the management team.
- Legal & Municipal Agreements - Sec. 37, Site Plan, Parks Contributions etc.
- Assist with preliminary planning relative to construction projections and site staging.
- Oversee building permit applications and process.
- Arrange all utilities and services applications and requirements.
- Arrange all closures (municipal) for construction site staging.
- Initiate & Co-ordinate all partial / occupancy and inspection processes.
- Direct the registration process with Surveys, legal, etc. and all required applications for draft plan approval/ severance.

SCHEDULE "B"

The bonus earned, provided the employee is employed by the employer at the time the money is deemed due shall be;

1. \$50,000 due 60 days after final registration of the declaration of 1000 Bay Condominiums
2. \$50,000 due 60 days after the final registration of the declaration of CASA II Condominiums
3. \$50,000 due 60 days after the final registration of the declaration of CASA III Condominiums
4. \$50,000 due 60 days after final declaration of the VOX Condominiums
5. The employer agrees to a \$100,000 bonus paid within 60 days after the final registration of the declaration on any new developments announced after the commencement date of this contract
6. The employer agrees to a \$200,000 credit to be applied towards the purchase of a Cresford condominium unit, that can be used on any new development announced after the employees start date.

Appendix 2



Application for a Permit to Construct or Demolish

This form is authorized under subsection 8(1.1) of the *Building Code Act, 1992*

For use by Principal Authority			
Application number:		Permit number (if different):	
Date received (yyyy-mm-dd):		Roll number:	
Application submitted to: <u>City of Toronto</u> (Name of municipality, upper-tier municipality, board of health or conservation authority)			
A. Project information			
Building number, street name 363-385 Yonge Street		Unit number	Lot/con.
Municipality Toronto	Postal code M5B1S1	Plan number/other description	
Project value est. \$ \$ 0.00		Area of work (m ²) 93,629.00	
B. Purpose of application			
<input checked="" type="checkbox"/> New construction <input type="checkbox"/> Addition to an existing building <input type="checkbox"/> Alteration/repair <input type="checkbox"/> Demolition <input type="checkbox"/> Conditional Permit			
Proposed use of building Mixed-use commercial and residential		Current use of building Vacant mixed-use	
i) Description of proposed work: Part Permit - Foundation Construction of an 85 storey mixed-use building with 1103 residential units, retail on B1, ground, 2nd and 3rd floor as well as institutional uses above a 5 level below grade structure containing 249 parking spaces and associated bike parking			
ii) Detailed description of proposed work must also be stated:			
C. Applicant			
Applicant is: <input type="checkbox"/> Owner or <input checked="" type="checkbox"/> Authorized agent of owner			
Last name Millar	First name Ryan	Corporation or partnership YSL Residences Inc	
Street address 59 Hayden Street		Unit number 200	Lot/con.
Municipality Toronto	Postal code M4Y0E7	Province Ontario	E-mail rmillar@cresford.com
Telephone number (416) 971-7557	Fax (416) 955-9452	Cell number (416) 230-0648	
D. Owner* (if different from applicant)			
Owner - includes the registered owner of the land, or a lessee, or mortgagee in possession.			
Last name	First name	Corporation or partnership YSL Residences Inc	
Street address 59 Hayden Street		Unit number 200	Lot/con.
Municipality Toronto	Postal code M4Y0E7	Province Ontario	E-mail rmillar@cresford.com
Telephone number (416) 971-7557	Fax (416) 955-9452	Cell number (416) 230-0648	

Folder No.

District Offices

<input checked="" type="checkbox"/> Toronto and East York	<input type="checkbox"/> North York	<input type="checkbox"/> Scarborough	<input type="checkbox"/> Etobicoke York
---	-------------------------------------	--------------------------------------	---

PART A – To be Completed by Owner

Project Description Construction of an 85 storey mixed use building with 1103 residential units, retail on B1, ground, 2nd and 3rd floor as well as institutional uses above a 5 level below grade structure with 249 parking spaces and associated bike parking
--

Address of Project 363-385 Yonge Street

WHEREAS the Ontario Building Code requires that the project described above be designed and reviewed during construction or demolition by an architect, professional engineer or both that are licensed to practice in Ontario;
WHEREAS Ontario Law prohibits the construction or demolition of a building if a permit has not been issued to authorize it, and
WHEREAS Architects and engineers are prohibited by law from undertaking reviews if a permit has not been issued,
NOW THEREFORE the Owner, who intends to construct or demolish or have the building constructed or demolished hereby confirms that:

1. The undersigned architect and/or professional engineers have been retained to provide general reviews of the construction or demolition of the building to determine whether the work is in general conformity with the plans and other documents that form the basis for the issuance of a permit, in accordance with the performance standards of the Ontario Association of Architects (OAA) and/or Professional Engineers of Ontario (PEO);
2. All general review reports by the architect and/or professional engineers will be forwarded promptly to the Chief Building Official;
3. Should any retained architect or professional engineer cease to provide general reviews for any reason during construction or demolition, the Chief Building Official will be notified in writing immediately, and another architect or engineer will be appointed so that general review continues without interruption; and
4. Construction or demolition will only be undertaken if an architect and/or professional engineers are retained to undertake general review, and a permit authorizing the proposed construction or demolition has been issued.

The undersigned hereby certifies that he/she has read and agrees to the above.

Owner's First Name YSL Residences Inc	Last Name
--	-----------

Street No. 59	Street Name Hayden Street	Postal Code M4Y0E7
-------------------------	-------------------------------------	------------------------------

Telephone No. (46) 971-7557	Mobile No. (416) 230-0648	Fax No. (416) 955-9452
---------------------------------------	-------------------------------------	----------------------------------

 Signature of Owner (Or authorized agent)	Ryan Millar Print Name	2019-12-04 Date (yyyy-mm-dd)
---	---------------------------	---------------------------------

Co ordinator of the work of all consultants Michael Monier
--

Street No. 317	Street Name Adelaide Street West	Postal Code M5V1P9
--------------------------	--	------------------------------

Telephone No. (416) 971-7557	Mobile No. (416) 230-0648	Fax No. (416) 955-9452
--	-------------------------------------	----------------------------------

Continue on next page


The personal information on this form is collected under the City of Toronto Act, S.O. 2006, Chapter 11, Schedule A, s. 136 (b) & (c) and the Ontario Building Code Act, S.O. 1992, Chapter 23. The information collected will be used for processing applications and creating aggregate statistical reports. Questions about this collection may be referred to the Customer Service Manager in the appropriate district. Toronto East York District, 100 Queen Street West, Ground Floor, West Tower, Toronto M5H 2N2; North York District, 5100 Yonge Street, 1st Floor, Toronto M2N 5W4; Etobicoke York District, 2 Civic Centre Court, 1st Floor, Toronto M9C 2Y2; Scarborough District, 150 Borough Drive, 3rd Floor, Toronto M1P 4N7. Phone: (416) 397-5330

Commitment to General Reviews

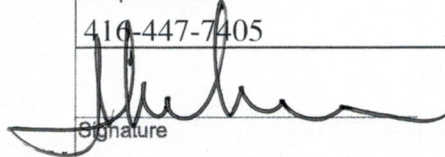
PART B – To be completed by Consultants

The undersigned architect and/or professional engineer(s) hereby certify that they are qualified in and have been retained to provide general reviews of the parts of construction or demolition of the building indicated, to determine whether the work is in general conformity with the plans and other documents that form the basis for the issuance of a permit, in accordance with the performance standards of the Ontario Association of Architects (OAA) or Professional Engineers Ontario (PEO).

First Consultant Information and Declaration

<input checked="" type="checkbox"/> Architectural <input type="checkbox"/> Structural <input type="checkbox"/> Mechanical <input type="checkbox"/> Electrical <input type="checkbox"/> Site Services				
<input type="checkbox"/> Other:				
First Name Michael		Last Name Monier		Firm Architects Alliance
Street Number 317	Street Name Adelaide Street West			Postal Code M5V 1P3
Telephone Number 416 593-6500		Mobile Number 647 200 5923		Fax Number
 Signature		Michael Monier Print Name		Date (yyyy-mm-dd)

Second Consultant Information and Declaration (if applicable)

<input type="checkbox"/> Architectural <input checked="" type="checkbox"/> Structural <input type="checkbox"/> Mechanical <input type="checkbox"/> Electrical <input type="checkbox"/> Site Services				
<input type="checkbox"/> Other:				
First Name Jeff		Last Name Watson		Firm Jablonsky, Ast and Partners
Street Number 3, 4th Floor	Street Name Concorde Gate			Postal Code M3C 3N7
Telephone Number 416-447-7405		Mobile Number		Fax Number 416-447-2771
 Signature		Jeff Watson Print Name		2019-12-13 Date (yyyy-mm-dd)

Third Consultant Information and Declaration (if applicable)

<input type="checkbox"/> Architectural <input type="checkbox"/> Structural <input type="checkbox"/> Mechanical <input type="checkbox"/> Electrical <input type="checkbox"/> Site Services				
<input type="checkbox"/> Other:				
First Name		Last Name		Firm
Street Number	Street Name			Postal Code
Telephone Number		Mobile Number		Fax Number
Signature		Print Name		Date (yyyy-mm-dd)



Application for a Permit to Construct or Demolish

This form is authorized under subsection 8(1.1) of the *Building Code Act, 1992*

For use by Principal Authority			
Application number:		Permit number (if different):	
Date received (yyyy-mm-dd):		Roll number:	
Application submitted to: City of Toronto (Name of municipality, upper-tier municipality, board of health or conservation authority)			
A. Project information			
Building number, street name 363 - 385 Yonge Street		Unit number	Lot/con.
Municipality Toronto	Postal code M5B1S1	Plan number/other description	
Project value est. \$ \$ 340,675,000.00		Area of work (m ²) 93,629.00	
B. Purpose of application			
<input checked="" type="checkbox"/> New construction <input type="checkbox"/> Addition to an existing building <input type="checkbox"/> Alteration/repair <input type="checkbox"/> Demolition <input type="checkbox"/> Conditional Permit			
Proposed use of building Mixed-use commercial and residential		Current use of building Vacant mixed-use	
i) Description of proposed work: Building, Plumbing and HVAC			
ii) Detailed description of proposed work must also be stated: Construction of an 85 Storey mixed-use building with 1103 residential units, retail on B1, ground, 2nd and 3rd floor as well as institutional uses above a 5 level below grade structure with 249 parking spaces and associated bike parking.			
C. Applicant			
Applicant is: <input type="checkbox"/> Owner or <input checked="" type="checkbox"/> Authorized agent of owner			
Last name Millar	First name Ryan	Corporation or partnership YSL Residences Inc	
Street address 59 Hayden Street		Unit number 200	Lot/con.
Municipality Toronto	Postal code M4Y0E7	Province Ontario	E-mail rmillar@cresford.com
Telephone number (416) 971-7557	Fax (416) 955-9452	Cell number (416) 230-0648	
D. Owner* (if different from applicant)			
Owner - includes the registered owner of the land, or a lessee, or mortgagee in possession.			
Last name	First name	Corporation or partnership YSL Residences Inc	
Street address 59 Hayden Street		Unit number 200	Lot/con.
Municipality Toronto	Postal code M4Y0E7	Province Ontario	E-mail rmillar@cresford.com
Telephone number (416) 971-7557	Fax (416) 955-9452	Cell number (416) 230-0648	

BUILDING PERMIT

This card must be kept posted in a conspicuous place on site of construction.

19 148484 BLD 00 BA

This Building Permit has also been reviewed and approved under the provisions of the Ontario Heritage Act.

Site Address 363 YONGE ST

Project Description Multiple Unit Building;

Other(BA)

Date Issued Friday May 31, 2019

William M. Johnston, P. Eng.
Chief Building Official and
Executive Director

Timothy C. Crawford
Deputy Chief Building Official and
Director

**THIS IS YOUR PERMIT TO CONSTRUCT
PERMIT NUMBER: 19 148484 BLD 00 BA**

Owner:

YSL RESIDENCES INC

2502295 ONTARIO INC.

Address:

C/O RYAN MILLAR
59 HAYDEN ST
TORONTO ON M4Y 2P2

59 HAYDEN ST 200
TORONTO, ON M4Y 0E7
CAN

Project Description: Multiple Unit Building; Other(BA)

Project Location: 363 YONGE ST

Ward:

The issuance of this permit is based on the drawings, specifications, details and information submitted with the application. The submitted documents have been reviewed for compliance with the Ontario Building Code, Zoning By-laws, applicable regulations and legislation.

The referenced permit number listed above and on your permit placard also appears on all plans reviewed for this building permit application. The validity of this permit is restricted to the person/company named as owner. Permit ownership cannot be transferred unless prior written authorization is given by the Chief Building Official.

The extent of construction authorized under this permit is limited to the description contained herein as follows:
Proposal to construct a heritage retention system to retain facade of existing building.

Stated work and use must be in accordance with the plans, specifications, building permit notes and other information issued with this building permit. Changes to any documents submitted are not to be made unless prior authorization is obtained from the Chief Building Official or designate. False information may be grounds for revocation of the building permit.

Notwithstanding, it is the responsibility of the owner to comply with requirements of the Ontario Building Code and applicable laws as well as to ensure compliance ..

The permit placard must be posted in a conspicuous place on the construction site.

Timothy C. Crawford
Deputy Chief Building Official
Toronto and East York District

Issued by: South District Issuance Team
Date Issued: May 31, 2019

Please see the second page of this letter for additional requirements and inspection information.

WHEN YOU BEGIN DEMOLITION/CONSTRUCTION ...

Site Fencing

As soon as construction or demolition starts, your site must be entirely surrounded by a fence which is in compliance with the City of Toronto Municipal Code Chapter 363, Article III. The minimum requirement is plastic mesh fencing, 1.2 metres high, tied to posts spaced no more than 1.2 metres apart with an 11 gauge top and bottom wire threaded through the mesh and looped around each post. The Municipal Code is available on the City website at:

http://www.toronto.ca/legdocs/municode/1184_363.pdf

Construction Noise

Any construction which generates noise is prohibited in residential areas between the hours of 7:00 p.m. one day to 7:00 a.m. the next day, 9:00 a.m. on Saturdays, and all day Sunday and Statutory holidays.

When To Call For Inspection

You are required by Division C, Part 1, Article 1.3.5.1. of the Ontario Building Code, to notify the building inspection office at several prescribed stages of construction. Please contact the building inspection office at the telephone number listed below, when each of the following stages are substantially complete:

Inspection Stages

- | | | |
|-----------------------------|--------------------------------|-----------------------------|
| * Excavation/Shoring | * Footings/Foundations | * Structural Framing |
| * Insulation/Vapour Barrier | * Fire Separations | * Fire Protection Systems |
| * Fire Access Routes | * Interior Final Inspection | * Exterior Final Inspection |
| * Site Grading Inspection | * Pool Suction/Gravity Outlets | * Pool Circulation System |
| * Occupancy | | |

To Schedule your Next Mandatory Inspection

When you are ready to book your inspection, you may request an inspection online from your computer or smart phone using Toronto Building's Inspection Request web application at www.toronto.ca/building-inspection-request.

Alternatively, you may contact your local building inspection office by telephone at 416-338-0700, by fax 416-696-4151 or by email to TOBldgInsp@toronto.ca.

Inspections will take place within two days commencing at the start of business on the day following your notification (Inspection Request).

Please leave a telephone number where you can be reached or a message can be left.

The inspector assigned to your project is Michele Argiro (416) 338-5766

PERMIT PLANS MUST BE ON SITE

Your permit plans and specifications must be on site at all times. Inspections are conducted with your copy of the plans.

May 31, 2019

BULLETIN - CONSTRUCTION SAFETY

The responsibilities of the City of Toronto under the Occupational Health and Safety Act apply to all our employees regardless of the location at which they are working.

Responsibilities for the Construction Safety Regulations on construction sites are clearly spelled out in the Act under the definitions of constructor, employer, supervisor and worker.

The City of Toronto believes that the goal of safe and injury free construction sites is a priority for all parties involved in building construction.

Safety training for the City of Toronto Building Inspectors is mandatory. However the delivery of a safe working environment on construction sites must include the compliance of individual builders with the Occupational Health and Safety Act.

Safety measures include the following:

1. Temporary guards on all openings,
2. Correct use of ladders,
3. Temporary or permanent stairs above or below grade by the time the sub floor is complete,
4. Clear and safe access to the site,
5. Protection of trenches and excavation below four feet deep, and
6. Correct use of fall prevention equipment where required.

As the employer responsible for the safety of building inspectors, the City of Toronto has instructed its Building Inspectors not to conduct inspections on sites where conditions exist that could jeopardize their health and safety.

The following are examples of conditions which may jeopardize the health and safety of inspectors:

1. Guards are missing,
2. Ladders do not meet regulations,
3. Temporary or permanent stairs, above or below grade, to all floor levels are not provided as required.
4. Access to the site has impediments or hazards, or
5. Trenches or excavations lack required shoring or slope of bank.

Prior to calling for an inspection the appropriate safety measures shall be in place as a site inadequately provided with these measures is not ready for inspection. The City of Toronto Building Inspectors will cooperate with builders regarding the timing of making provision for these safety measures. However, if the measures are not provided, an Order Not To Cover could be issued and the Ministry of Labour informed.

We look forward to working with you toward the goal of a safe environment for all workers.

Notice of Project - Please be advised that the Ministry of Labour requires a Notice of Project be filed with them before starting any project costing \$50,000 or more.

For more information about the Notice of Project form and construction information please visit Ministry of Labour website at: <https://www.labour.gov.on.ca/english/hs/forms/>

Report an Incident

Notify the ministry of fatalities, critical injuries, work refusals, reprisals and unsafe work practices.
Ministry of Labour Health Safety Contact Centre

Toll-free: 1-877-202-0008

TTY: 1-855-653-9260

Fax: 905-577-1316

Construction of the work approved in this building permit must be carried out with reasonable care to ensure protection for everyone on the construction site from the hazards associated with all overhead and underground power lines. Obtain further information at: <http://www.torontohydro.com/powerlinesafety>

**TORONTO MUNICIPAL CODE 441
FEES AND CHARGES
Appendix C - Schedule 8, Toronto Building**

19 148484 BLD 00 BA
363 YONGE STREET

Total Permit Fee **\$198.59**

Work Proposed *Other(BA)* **Sub** *Multiple Unit Building*

Building Classification	Service	Index	Value in Square Meters	Fee
	<small><i>Dollars per Square Meter unless otherwise indicated</i></small>		<small><i>(unless otherwise indicated)</i></small>	

Other Applicable Fees:

examiner to verify		198.59
--------------------	--	--------

Total Permit Fee **\$198.59**

Subject to a minimum permit fee of \$198.59

Heritage Advisory Comments

The reviewed plans and specifications must be available on site during construction/demolition. Changes to these plans and specifications are not to be made unless prior written approval is obtained from the Chief Building Official and the Manager, Heritage Preservation Services.

The owner/permit holder is required to comply with the following Permit Notes, which are part of the reviewed permit documents:

- Any modification to the drawings included as a part of this application must be approved by Heritage Preservation Services
- A letter of credit secures this work

Name: Ragini Dayal
Title: Planner
Contact Info: 17th Floor, East Tower
100 Queen Street West
Toronto, ON M5H 2N2
rdalay@toronto.ca

NOTES:

1. GENERAL

- 1.1 WHERE DOCUMENTS ARE REFERENCED IN THE GENERAL AND DESIGN NOTES, THEY SHALL BE THE LATEST EDITIONS, UNLESS OTHERWISE NOTED OR SHOWN.
- 1.2 READ STRUCTURAL DRAWINGS IN CONJUNCTION WITH SPECIFICATIONS AND ALL OTHER CONTRACT DOCUMENTS.
- 1.3 BEFORE PROCEEDING WITH THE WORK, CONTRACTOR MUST CHECK ALL THE DIMENSIONS SHOWN ON THE STRUCTURAL DRAWINGS AGAINST ACTUAL SITE CONDITIONS. CONTRACTOR IS TO REPORT ANY DISCREPANCIES TO THE CONSULTANT.

2. DESIGN

- 2.1 THE STRUCTURE HAS BEEN DESIGNED IN ACCORDANCE WITH THE REQUIREMENTS OF THE 2012 ONTARIO BUILDING CODE AND THE NATIONAL BUILDING CODE OF CANADA 2015
- 2.2 ALL REINFORCED CONCRETE ELEMENTS HAVE BEEN DESIGNED IN ACCORDANCE WITH A23.3, DESIGN OF CONCRETE STRUCTURES.
- 2.3 ALL STRUCTURAL STEEL ELEMENTS HAVE BEEN DESIGNED IN ACCORDANCE WITH CAN/CSA-S16-09, LIMIT STATES DESIGN OF STEEL STRUCTURES.
- 2.4 FAÇADE TIES AND TEMPORARY FAÇADE RETENTION STEEL ARE DESIGNED TO RESIST THE FOLLOWING DESIGN PARAMETERS.
 - 2.4.1 WIND LOADS $q = 0.53kPa$, C_e , C_p AND C_{pi} ARE CALCULATED BASED ON THE USER'S GUIDE - NBCC - STRUCTURAL COMMENTARIES (PART 4 OF DIVISION B).
 - 2.4.2 LATERAL LOAD ASSESSED AS ARISING FROM OFFSET AND OUT-OF-PLUMB OF THE FAÇADE AT THE LEVEL OF THE CONNECTION BEING CONSIDERED: 2.5% OF FAÇADE WEIGHT RESTRAINED BY THE CONNECTION.
- 2.5 A LATERAL DEFLECTION LIMIT OF HEIGHT 1/750.
- 2.6 FACTORS OF SAFETY AGAINST OVERTURNING AND SLIDING OF TWO (2) CONSIDERED IN THE DESIGN OF THE TEMPORARY RETENTION STEEL FRAME SUPPORTS.

3. MONITORING

- 3.1 A CERTIFIED SURVEYOR IS TO RECORD MOVEMENT OF THE RETAINED FAÇADES AT LOCATIONS SHOWN ON THE ELEVATIONS BELOW AND AT THE CLOSEST CORRESPONDING FRONT MEMBER OF THE STEEL RETENTION TOWERS.
 - 3.1.1 A BASELINE SURVEY AND SUBSEQUENT WEEKLY SURVEYS (UNTIL ONE (1) MONTH AFTER THE FAÇADE IS FULLY RETAINED) ARE TO BE COMPLETED ONCE THE CAST-IN-PLACE CONCRETE SLABS, RETENTION TOWERS AND COUNTER WEIGHTS HAVE BEEN INSTALLED.
 - 3.1.2 SURVEYS ARE TO BE COMPLETED NOT LESS THAN DAILY DURING THE PHYSICAL SEPARATION OF THE FAÇADE.
 - 3.1.3 SURVEYS ARE TO CONTINUE NOT LESS THAN MONTHLY (SCHEDULE MAY BE ADJUSTED DEPENDING ON MOVEMENT) UNTIL THE PERMANENT SUPPORTS AND CONNECTIONS TO THE NEW STRUCTURE HAVE BEEN INSTALLED AND REVIEWED BY THE ENGINEER OF RECORD.



KEYPLAN - WORK AREAS
SCALE: NOT TO SCALE

DO NOT SCALE DRAWINGS.

THE CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS AND OMISSIONS TO THE CONSULTANT BEFORE PROCEEDING WITH THE WORK. THIS DRAWING SHALL NOT BE REPRODUCED IN ANY MANNER, IN PART OR IN WHOLE, FOR ANY PROJECT OTHER THAN THAT FOR WHICH IT WAS PREPARED. THIS DRAWING AND ALL DESIGN CONCEPTS THEREON, ARE AN INSTRUMENT OF PROFESSIONAL SERVICE AND REMAIN THE PROPERTY OF FACET GROUP INC.

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SECTION/DETAIL NUMBER
DWG No. WHERE DETAILED

No.	Revision	Date
1	ISSUED FOR GENERAL REVIEW	30 MAY 2017
2	UPDATED AS PER COMMENTS	02 JUNE 2017
3	ISSUED FOR CP	04 OCT 2017
4	ISSUED FOR BUILDING PERMIT	29 SEP 2018
5	ISSUED FOR TENDER	29 JAN 2019
6	RE-ISSUED FOR BUILDING PERMIT	04 MAR 2019

Toronto Building
PERMIT REVIEWED FOR COMPLIANCE WITH THE ONTARIO BUILDING CODE

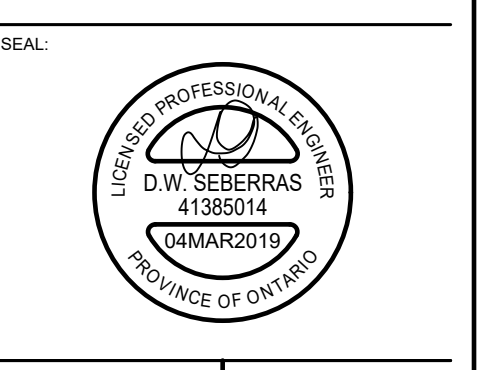
19 148484 BLD 00

ZONING: Tamondong, Ray 29/May/2019

O.B.C.: Kramanovic, Gordana 15/May/2019

FIRE SERVICES

O.B.C. (S)



CHECKED BY: D.S. FIRM NO: 30361

DRAWN BY: B.B.



PROJECT LOCATION:
YSL RESIDENCE
385 YONGE STREET
TORONTO, ON

PROJECT DESCRIPTION:
EXISTING HISTORICAL
FAÇADE RETENTION

Facet Group Inc.
Heritage Building Consultants,
Engineering and Project Management
716 - 228 Queens Quay West
Toronto, Ontario M5J 2X1
Tel: 416-409-0772 | Fax: 416-416-2453
www.facetgroup.ca | neil@facetgroup.ca

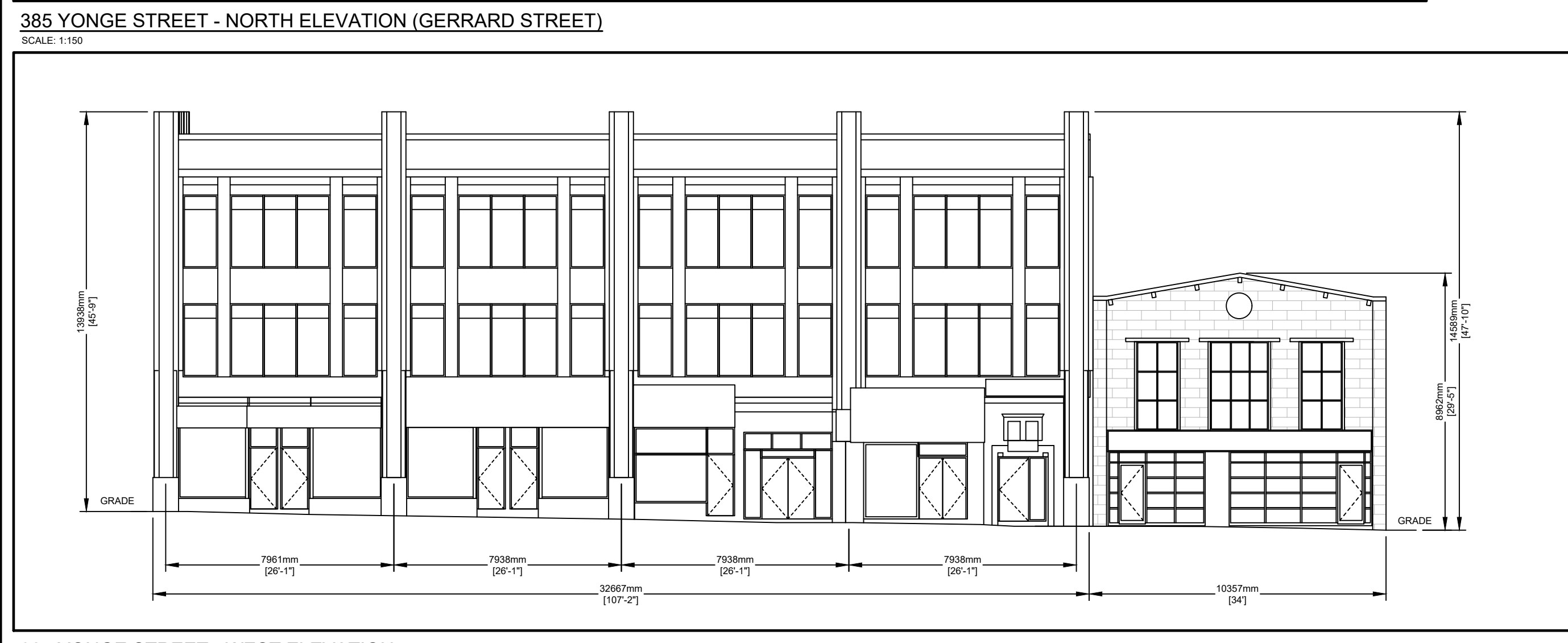
David Seberas P. Eng.
SEBERAS PROFESSIONAL SERVICES LTD

ENTUITIVE
Entuitive Corporation
200 University Avenue, 7th Floor
Toronto, ON M5H 3C9 Canada
entuitive.com

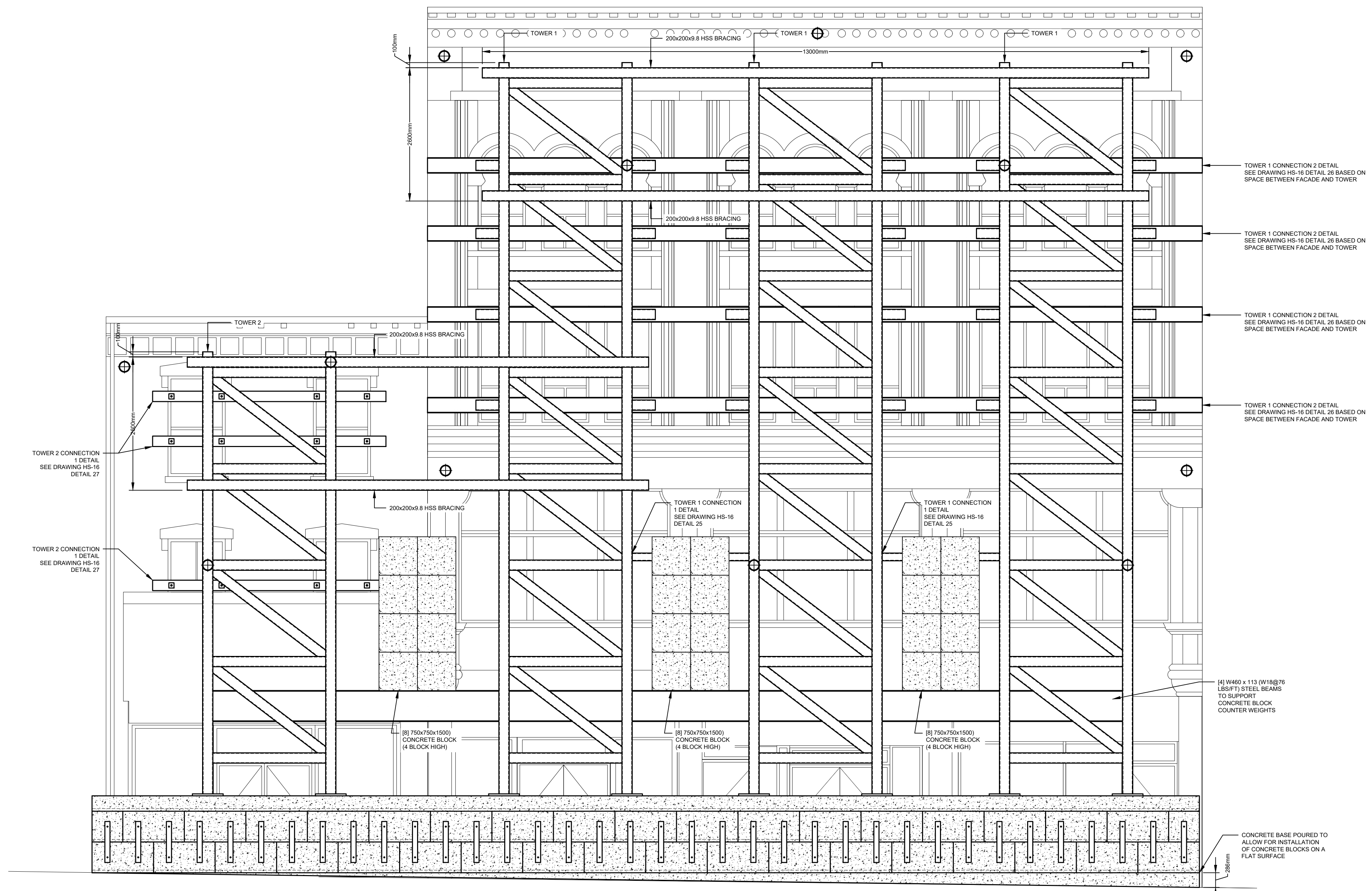
DRAWING TITLE:
GENERAL NOTES
FAÇADE ELEVATIONS

PROJECT NO: 201705
SCALE: 1:150

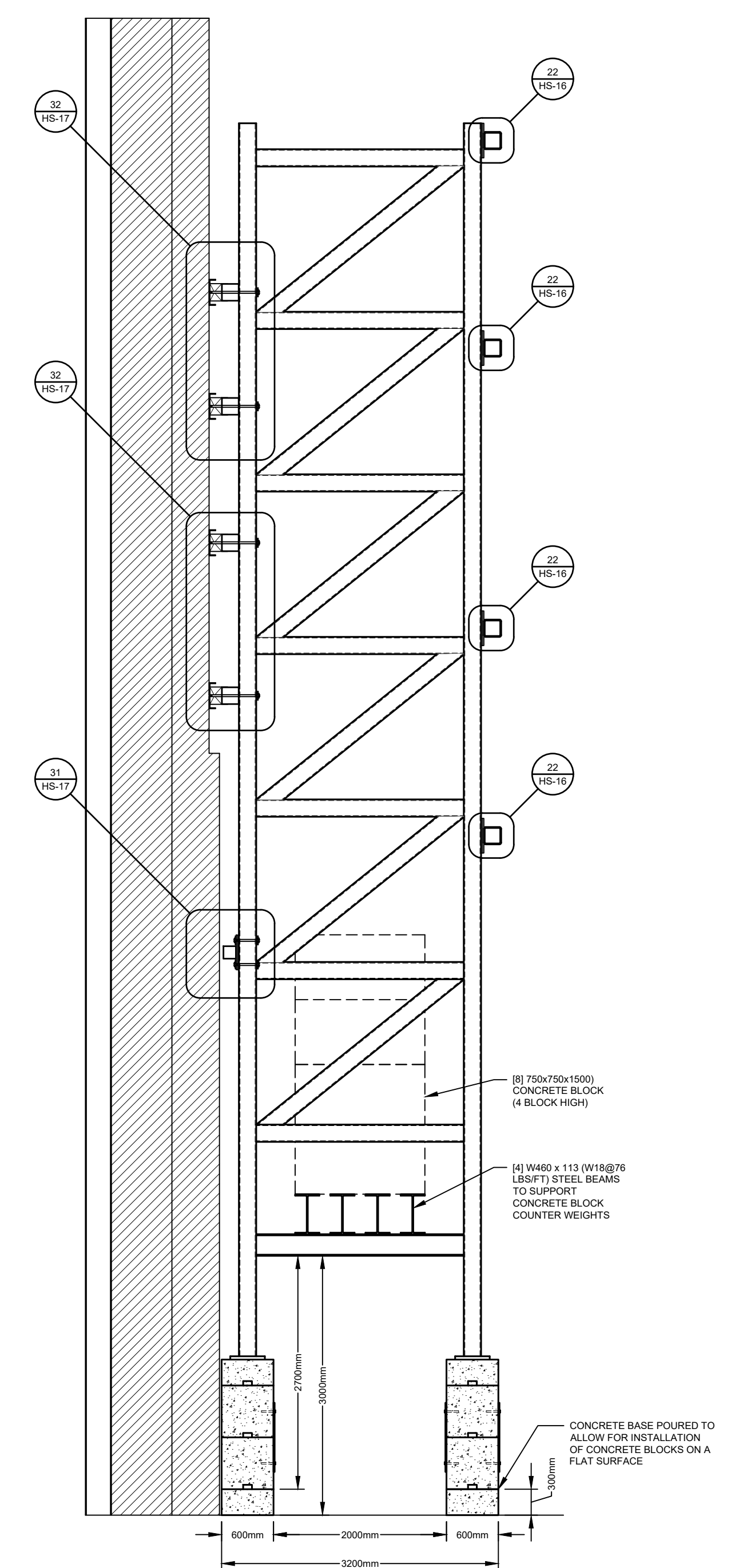
DRAWING NO: **HS-1**



STRUCTURAL DESIGN BY PROFESSIONAL ENGINEER:
The City has relied upon the plans and drawings prepared and submitted by the qualified architects and/or engineers on this project. The issuance of a building permit does not imply that a complete design review of this project has been performed and does not relieve the owner and designers from the need to comply with the Ontario Building Code and referenced standards where contraventions are subsequently noted.



363 - 365 YONGE STREET - WEST ELEVATION TOWER 1 and TOWER 2 LAYOUT
SCALE: 1:50



363 - 365 YONGE STREET - WEST ELEVATION CROSS SECTION TOWER 1
SCALE: 1:50

ELEVATION NOTES:

- GENERAL**
 - 1.1 STOREFRONT OPENING SUPPLEMENT SUPPORT TO BE REVIEWED

DO NOT SCALE DRAWINGS.
THE CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS AND OMISSIONS TO THE CONSULTANT BEFORE PROCEEDING WITH THE WORK.
THIS DRAWING SHALL NOT BE REPRODUCED IN ANY MANNER, IN PART OR IN WHOLE, FOR ANY PROJECT OTHER THAN THAT FOR WHICH IT WAS PREPARED.
THIS DRAWING AND ALL DESIGN CONCEPTS THEREON, ARE AN INSTRUMENT OF PROFESSIONAL SERVICE AND REMAIN THE PROPERTY OF FACET GROUP INC.
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Toronto Building
PERMIT REVIEWED FOR COMPLIANCE WITH THE ONTARIO BUILDING CODE
19 148484 BLD 00

ZONING	O.B.C.	Krsmanovic, Gordana	15/May/2019
FIRE SERVICES	O.B.C. (S)		

CHECKED BY: D.S.
DRAWN BY: B.B.

FIRM NO: 30361

PROFESSIONAL ENGINEER
D.W. SEBERRAS
41385014
04MAY2019
PROVINCE OF ONTARIO

Construction North

PROJECT LOCATION:
YSL RESIDENCE
385 YONGE STREET
TORONTO, ON

PROJECT DESCRIPTION:
EXISTING HISTORICAL
FACADE RETENTION

Facet Group Inc.
Heritage Building Consultants,
Engineering and Project Management
716 - 228 Queens Quay West
Toronto, Ontario M5J 2X1
Tel: 416-409-0772 | Fax: 416-469-2453
www.facetgroup.ca | neil@facetgroup.ca

David Seberas P. Eng.
SEBERRAS PROFESSIONAL SERVICES LTD

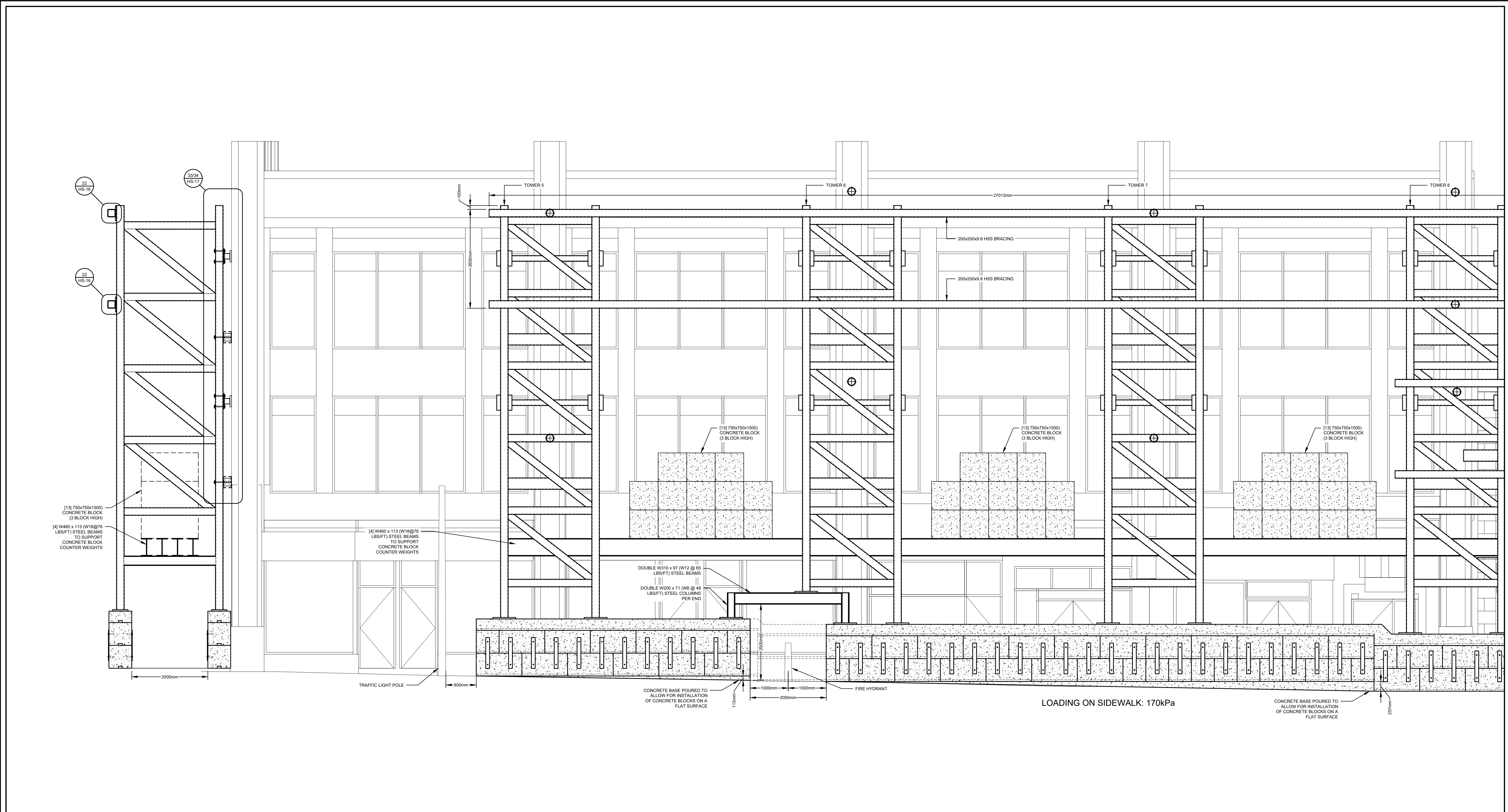
ENTUITIVE
Entuitive Corporation
200 University Avenue, 7th Floor
Toronto, ON M5S 3C9 Canada
entuitive.com

T. 416 477 5832

DRAWING TITLE:
FACADE ELEVATIONS
TOWER ELEVATIONS

PROJECT NO: 201705
SCALE: 1:50

DRAWING NO: **HS-2**



385 YONGE STREET - WEST ELEVATION TOWER 5, 6, 7, 8 LAYOUT
SCALE: 1:50

DO NOT SCALE DRAWINGS.
THE CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS AND OMISSIONS TO THE CONSULTANT BEFORE PROCEEDING WITH THE WORK. THIS DRAWING SHALL NOT BE REPRODUCED IN ANY MANNER, IN PART OR IN WHOLE, FOR ANY PROJECT OTHER THAN THAT FOR WHICH IT WAS PREPARED. THIS DRAWING AND ALL DESIGN CONCEPTS THEREON, ARE AN INSTRUMENT OF PROFESSIONAL SERVICE AND REMAIN THE PROPERTY OF FACET GROUP INC.

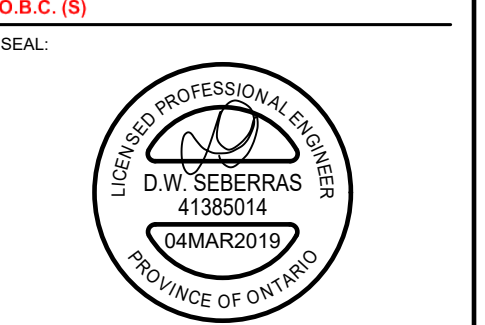
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Toronto Building
PERMIT REVIEWED FOR COMPLIANCE WITH THE ONTARIO BUILDING CODE
19 148484 BLD 00

ZONING	O.B.C.	Kismanovic, Gordana	15/May/2019
FIRE SERVICES	O.B.C. (S)		



CHECKED BY:	FIRM NO:
D.S.	30361
DRAWN BY:	
B.B.	

Construction North

PROJECT LOCATION:
YSL RESIDENCE
385 YONGE STREET
TORONTO, ON

PROJECT DESCRIPTION:
EXISTING HISTORICAL
FACADE RETENTION

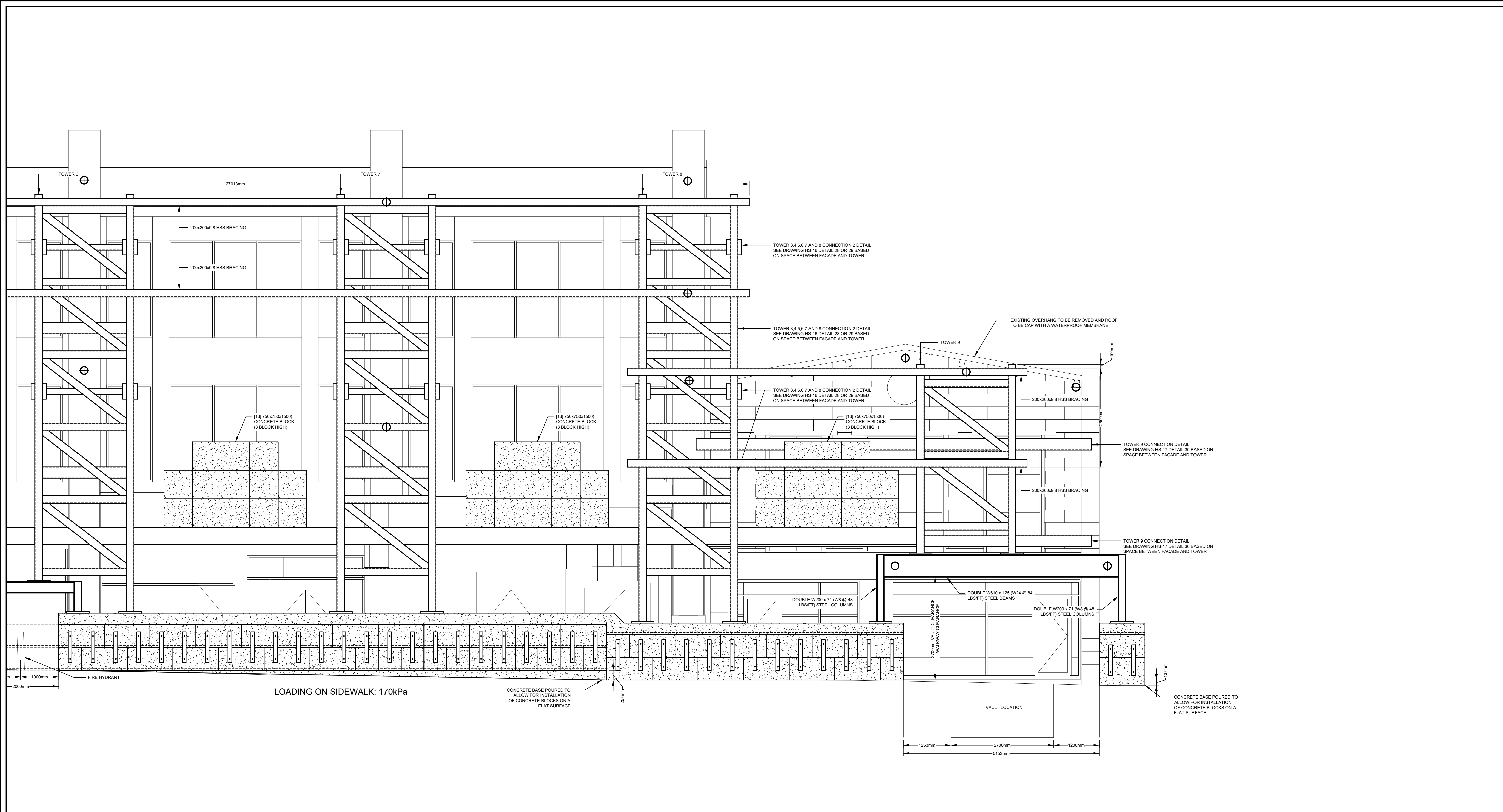
Facet Group Inc.
Heritage Building Consultants,
Engineering and Project Management
716 - 228 Queens Quay West
Toronto, Ontario M5J 2X1
Tel: 416-409-0772 | Fax: 416-349-2453
www.facetgroup.ca | neil@facetgroup.ca
David Seberras P. Eng.
SEBERRAS PROFESSIONAL SERVICES LTD

ENTUITIVE
Entuitive Corporation
200 University Avenue, 7th Floor
Toronto, ON M5H 3C9 Canada
entuitive.com
T. 416 477 5832

DRAWING TITLE:
FACADE ELEVATIONS
TOWER ELEVATIONS

PROJECT NO: 201705	DRAWING NO: HS-3
SCALE: 1:50	

ELEVATION NOTES:
1. GENERAL
1.1 STOREFRONT OPENING SUPPLEMENT SUPPORT TO BE REVIEWED



385 YONGE STREET - WEST ELEVATION TOWER 6, 7, 8, 9 LAYOUT

SCALE: 1:50

DO NOT SCALE DRAWINGS.

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No.	Revision	Date
1	ISSUED FOR GENERAL REVIEW	30 MAY 2017
2	UPDATED AS PER COMMENTS	02 JUNE 2017
3	ISSUED FOR CP	04 OCT 2017
4	ISSUED FOR BUILDING PERMIT	29 SEP 2018
5	ISSUED FOR TENDER	29 JAN 2019
6	RE-ISSUED FOR BUILDING PERMIT	04 MAR 2019

Toronto Building
PERMIT REVIEWED FOR COMPLIANCE WITH
THE ONTARIO BUILDING CODE

19 148484 BLD 00

ZONING
O.B.C. Krizanovic, Gordana 15/May/2019

FIRE SERVICES

O.B.C. (S)



CHECKED BY: D.S. FIRM NO: 30361
DRAWN BY: B.B.



PROJECT LOCATION:
YSL RESIDENCE
385 YONGE STREET
TORONTO, ON

PROJECT DESCRIPTION:
EXISTING HISTORICAL
FACADE RETENTION

Facet Group Inc.
Heritage Building Consultants,
Engineering and Project Management
716 - 228 Queens Quay West
Toronto, Ontario M5J 2X1
Tel: 416-409-0772 | Fax: 416-409-2453
www.facetgroup.ca | neil@facetgroup.ca
David Seberras P. Eng.
SEBERRAS PROFESSIONAL SERVICES LTD

ENTUITIVE
Entuitive Corporation
200 University Avenue, 7th Floor
Toronto, ON M5A 3C9 Canada
entuitive.com
T. 416 477 5832

DRAWING TITLE:
FACADE ELEVATIONS
TOWER ELEVATIONS

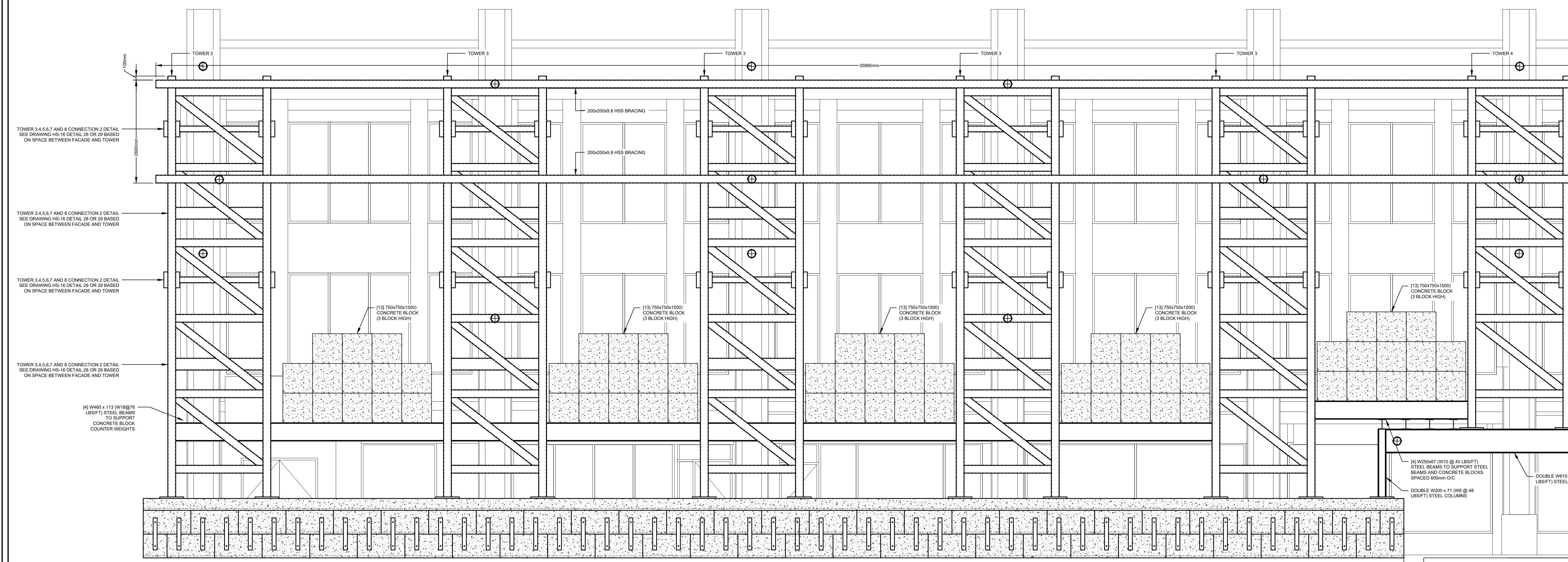
PROJECT NO: 201705
SCALE: 1:50
DRAWING NO: HS-4

ELEVATION NOTES:
1. GENERAL
1.1 STOREFRONT OPENING SUPPLEMENT SUPPORT TO BE REVIEWED

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LOADING ON SIDEWALK: 170kPa

LOADING ON SIDE VAULT LOCAL

385 YONGE STREET - NORTH ELEVATION (GERRARD STREET) PARTIAL TOWER 3, 4 LAYOUT
 SCALE: 1:50

Toronto Building
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ZONING	O.B.C.	Kismanovic, Gordana	15/May/2019
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Construction North

PROJECT LOCATION:
 YSL RESIDENCE
 385 YONGE STREET
 TORONTO, ON

PROJECT DESCRIPTION:
 EXISTING HISTORICAL
 FACADE RETENTION

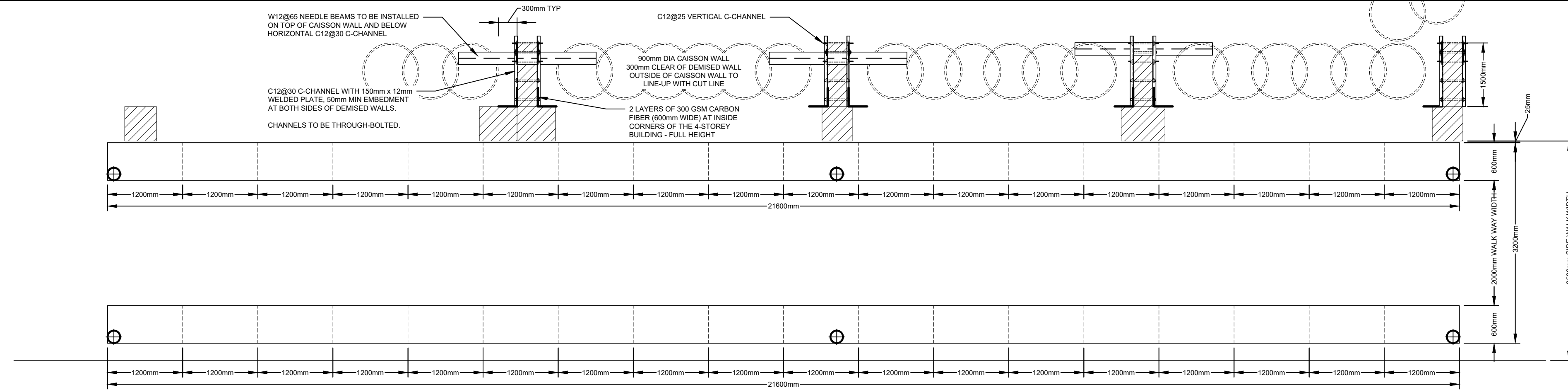
Facet Group Inc.
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DRAWING TITLE:
 FACADE ELEVATIONS
 TOWER ELEVATIONS

PROJECT NO:	DRAWING NO:
201705	HS-5
SCALE:	
1:50	

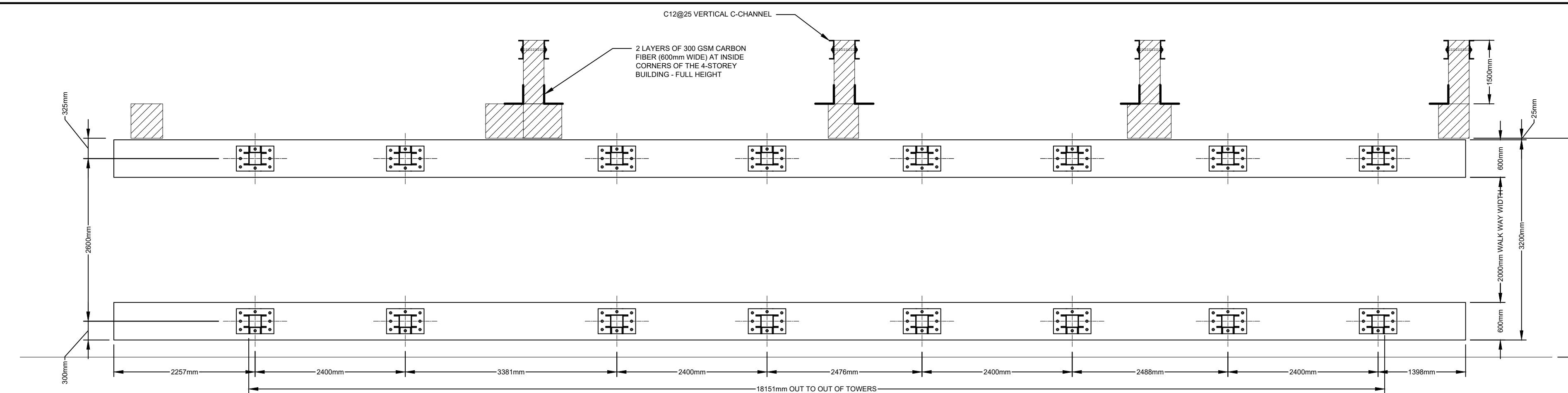
ELEVATION NOTES:
 1. GENERAL
 1.1 STOREFRONT OPENING SUPPLEMENT SUPPORT TO BE REVIEWED



NOTE: BELOW GRADE SHORING DESIGNED BY ISHERWOOD GEOSTRUCTURAL ENGINEERS

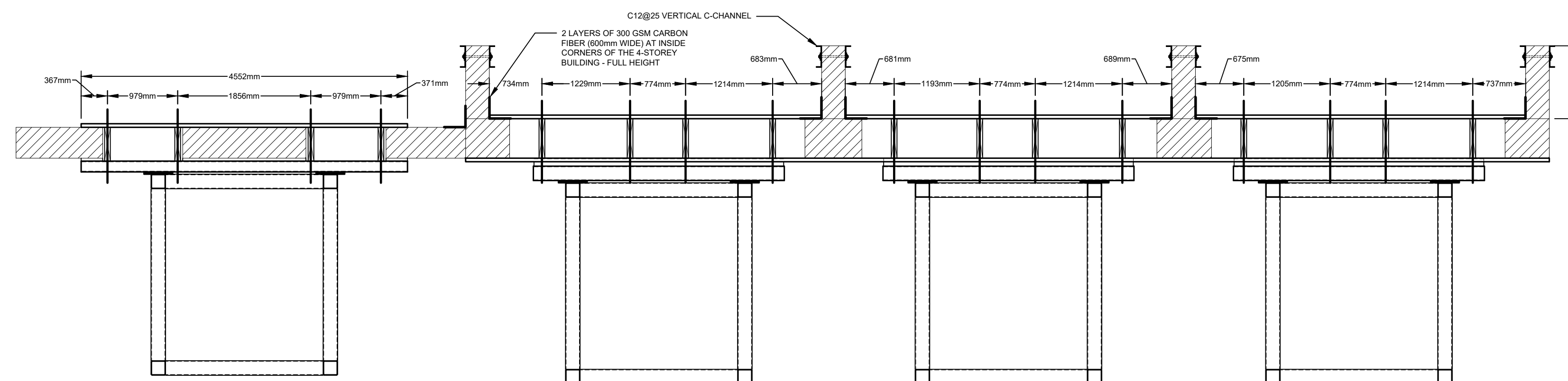
363 - 365 YONGE STREET - WEST ELEVATION PLAN AT GRADE

SCALE: 1:50



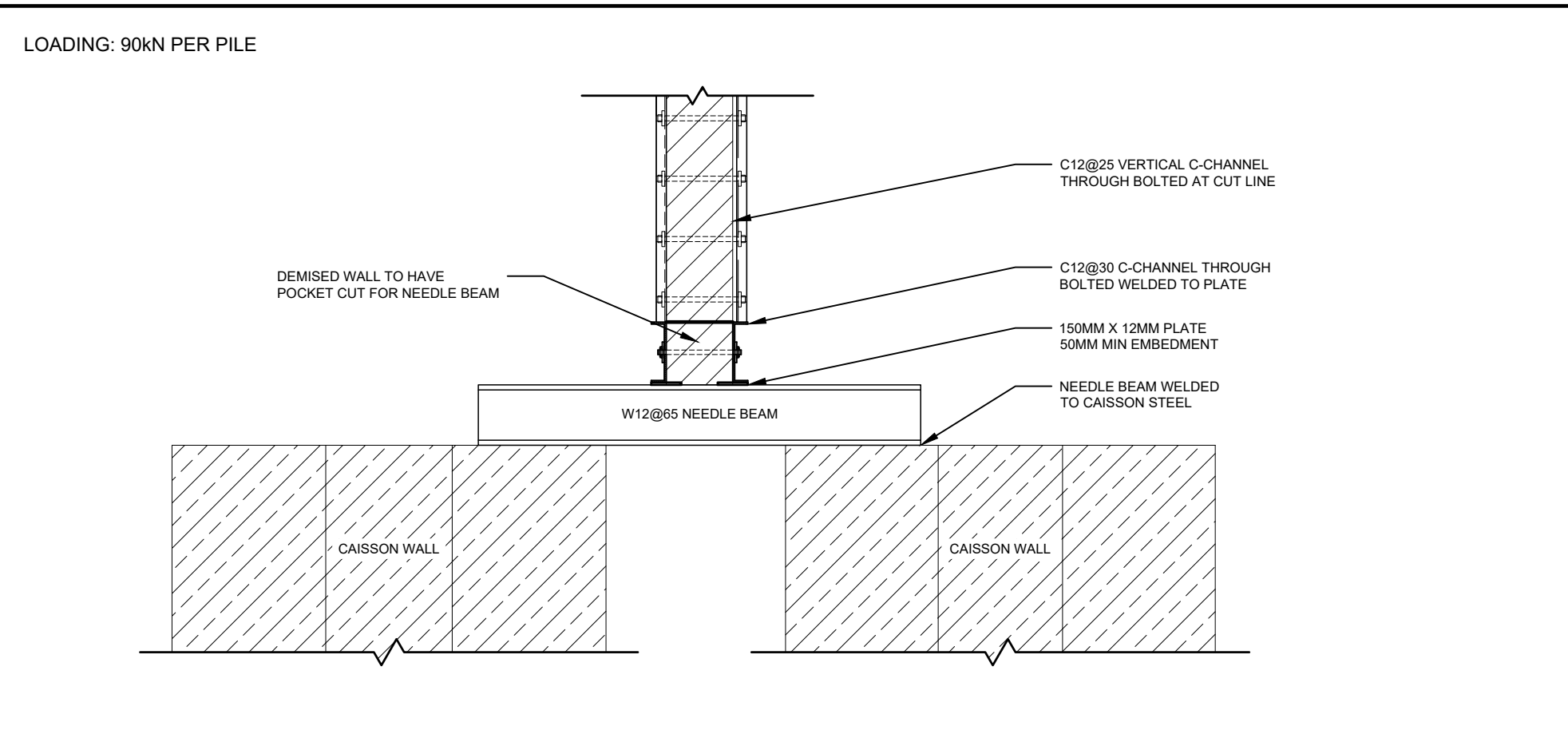
363 - 365 YONGE STREET - WEST ELEVATION TOWER BASE PLATE LOCATIONS

SCALE: 1:50



363 - 365 YONGE STREET - WEST ELEVATION - SECOND FLOOR TOWER TO FACADE CONNECTION 1 PLAN

SCALE: 1:50



363 - 365 YONGE STREET - NEEDLE BEAM DETAIL

SCALE: 1:30

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ZONING	
O.B.C.	Krsmanovic, Gordana 15/May/2019
FIRE SERVICES	

O.B.C. (S)



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Construction North

PROJECT LOCATION:
YSL RESIDENCE
385 YONGE STREET
TORONTO, ON

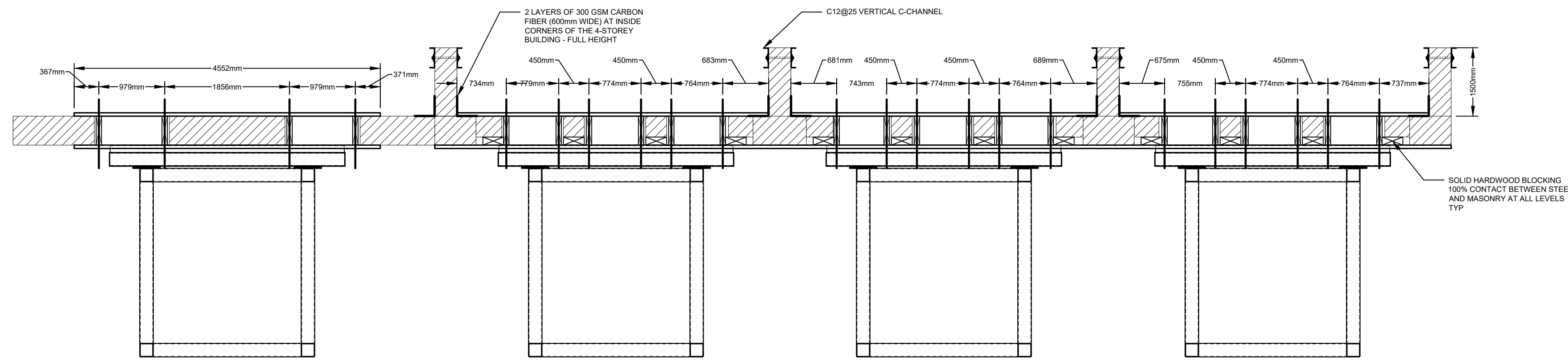
PROJECT DESCRIPTION:
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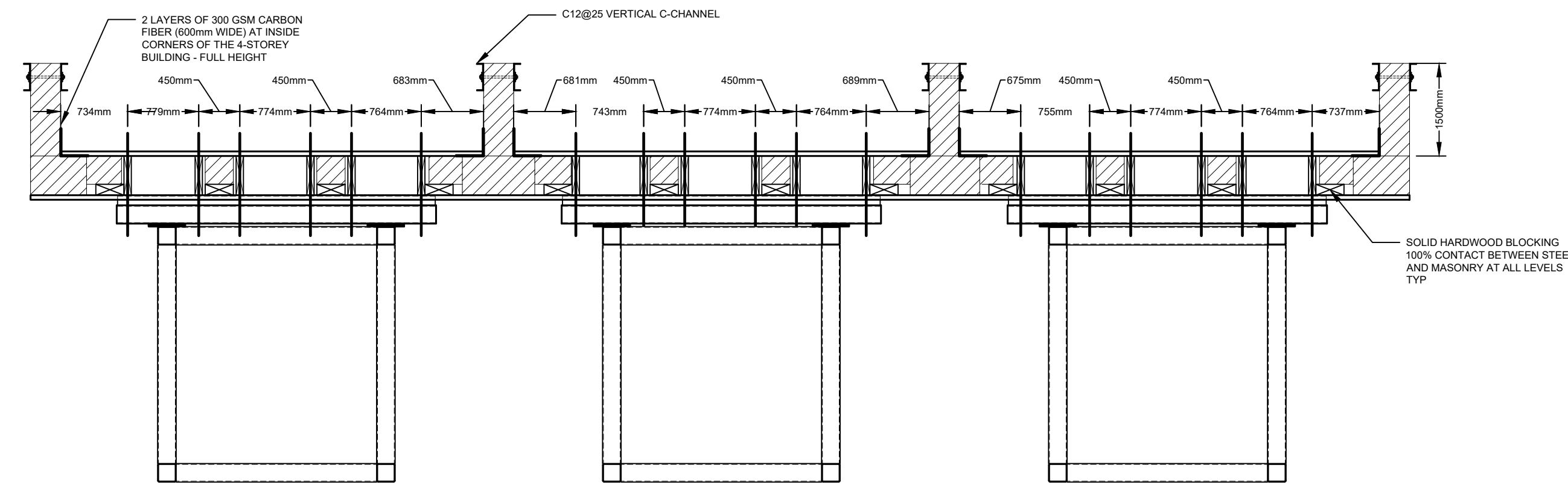
DRAWING TITLE:
TOWER FRAME PLAN
NEEDLE BEAM DETAIL

PROJECT NO:	DRAWING NO:
201705	HS-7
SCALE:	AS NOTED



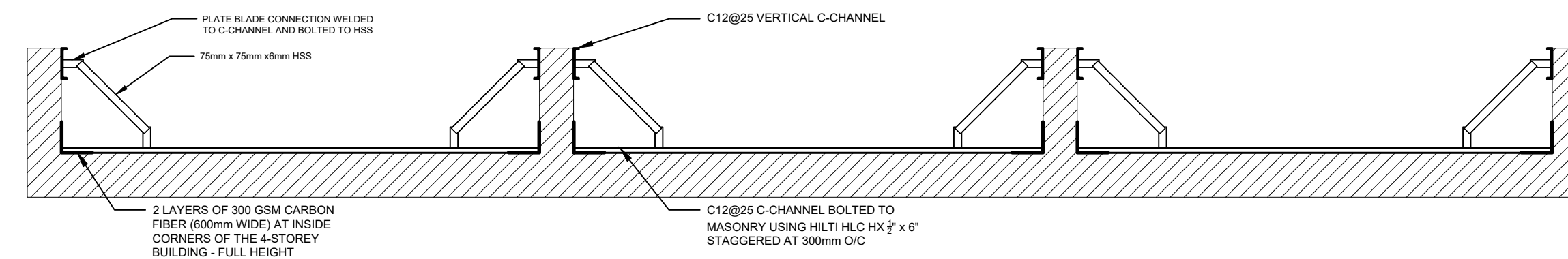
363 - 365 YONGE STREET - WEST ELEVATION - THIRD FLOOR TOWER TO FACADE CONNECTION 2 PLAN

SCALE: 1:50



363 - 365 YONGE STREET - WEST ELEVATION - FOURTH FLOOR TOWER TO FACADE CONNECTION 2 PLAN

SCALE: 1:50



NOTE:

1. ELEVATION TO BE CONFIRMED AFTER REMOVAL OF ROOF BUILDUP AND FRAMING
2. PLATE BLADE CONNECTIONS AND HSS BRACING TO HAVE 6mm FILLET WELD, CONTINUOUS, ALL SIDES

363 - 365 YONGE STREET - WEST ELEVATION - PARAPET REINFORCEMENT

SCALE: 1:50

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ZONING	
O.B.C.	Krsmanovic, Gordana 15/May/2019
FIRE SERVICES	

O.B.C. (S)

SEAL:



CHECKED BY:	FIRM NO:
D.S.	30361
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B.B.	

Construction North



PROJECT LOCATION:
YSL RESIDENCE
385 YONGE STREET
TORONTO, ON

PROJECT DESCRIPTION:
EXISTING HISTORICAL
FACADE RETENTION

Facet Group Inc.

Heritage Building Consultants,
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Toronto, Ontario M5J 2X1
Tel: 416-409-0772 | Fax: 416-349-2453
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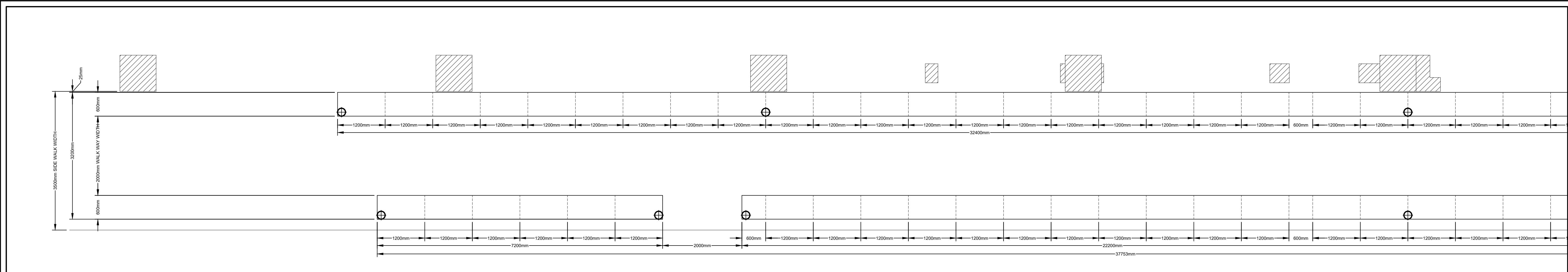
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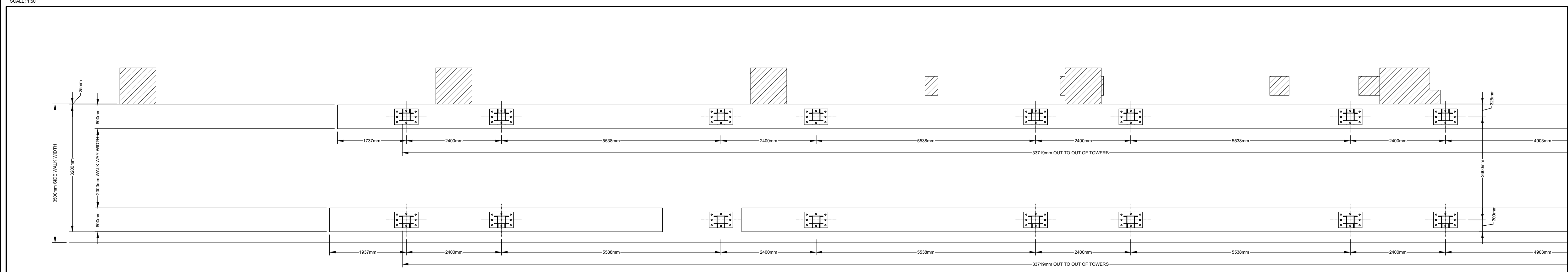
DRAWING TITLE:
TOWER FRAME PLAN

PROJECT NO:
201705
SCALE:
AS NOTED

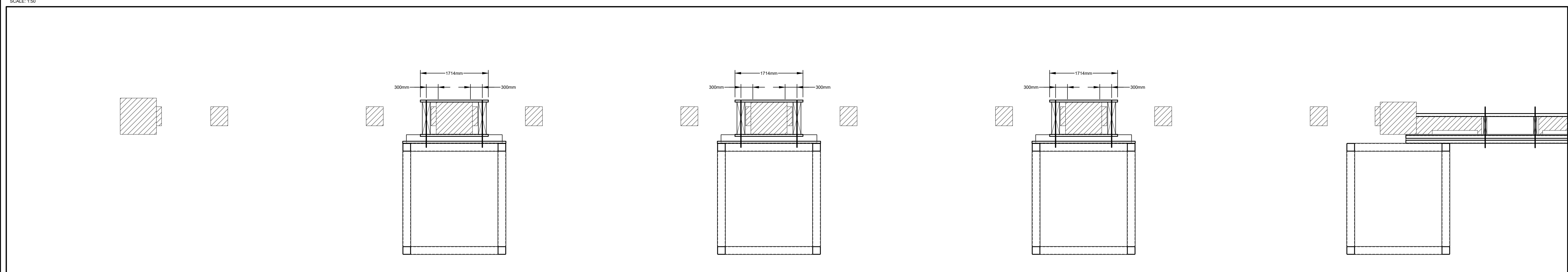
DRAWING NO:
HS-8



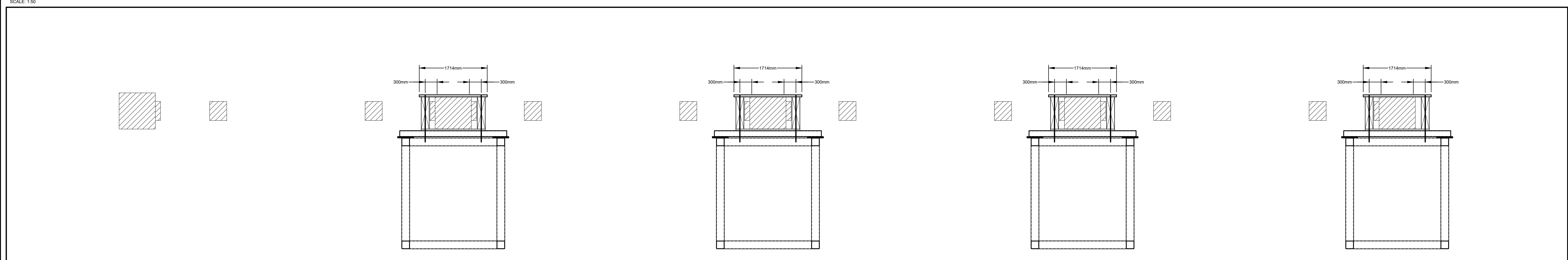
385 YONGE STREET - WEST ELEVATION - CONCRETE BLOCK PLAN



385 YONGE STREET - WEST ELEVATION TOWER BASE PLATE LOCATIONS



385 YONGE STREET - WEST ELEVATION - SECOND FLOOR TOWER TO FACADE CONNECTION 1 PLAN



385 YONGE STREET - WEST ELEVATION - THIRD FLOOR TOWER TO FACADE CONNECTION 2 PLAN

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Toronto Building
 PERMIT REVIEWED FOR COMPLIANCE WITH THE ONTARIO BUILDING CODE

19 148484 BLD 00

ZONING
 O.B.C. Krizanovic, Gordana 15/May/2019

FIRE SERVICES
 O.B.C. (S)



CHECKED BY: D.S. FIRM NO: 30361
 DRAWN BY: B.B.



PROJECT LOCATION:
 YSL RESIDENCE
 385 YONGE STREET
 TORONTO, ON

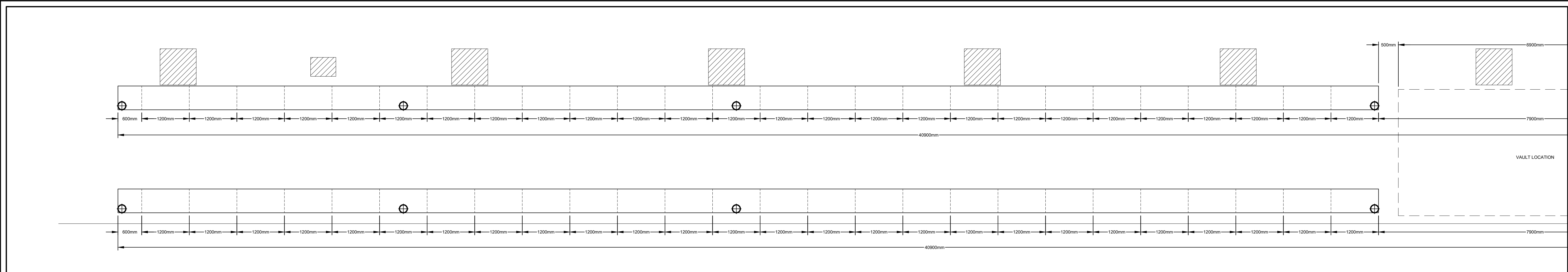
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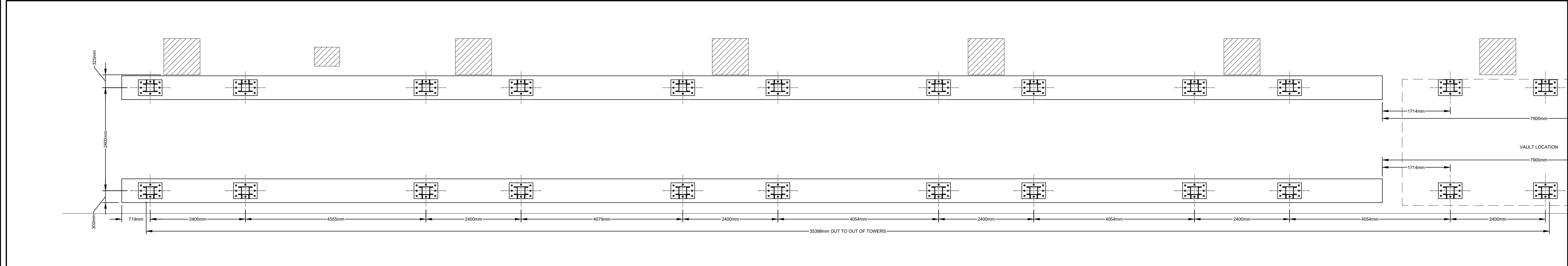
DRAWING TITLE:
 TOWER FRAME PLAN

PROJECT NO: 201705
 SCALE: AS NOTED
 DRAWING NO: HS-9



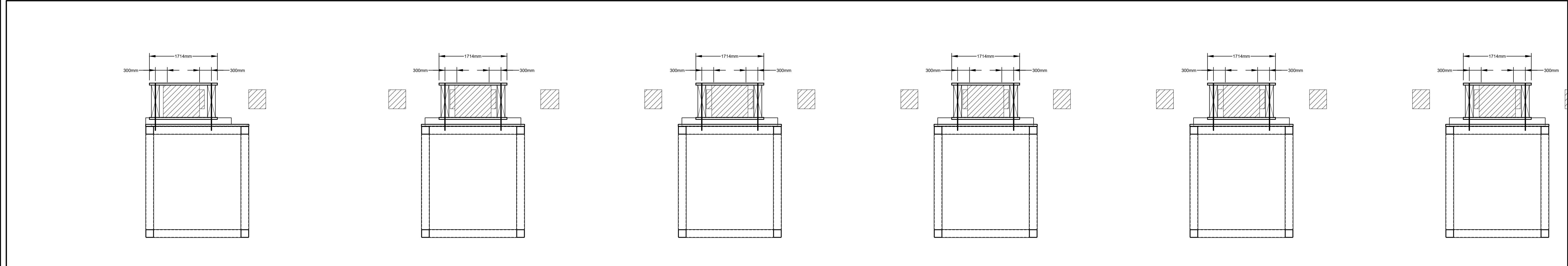
385 YONGE STREET - NORTH ELEVATION (GERRARD STREET) - CONCRETE BLOCK PLAN (PARTIAL)

SCALE: 1:50



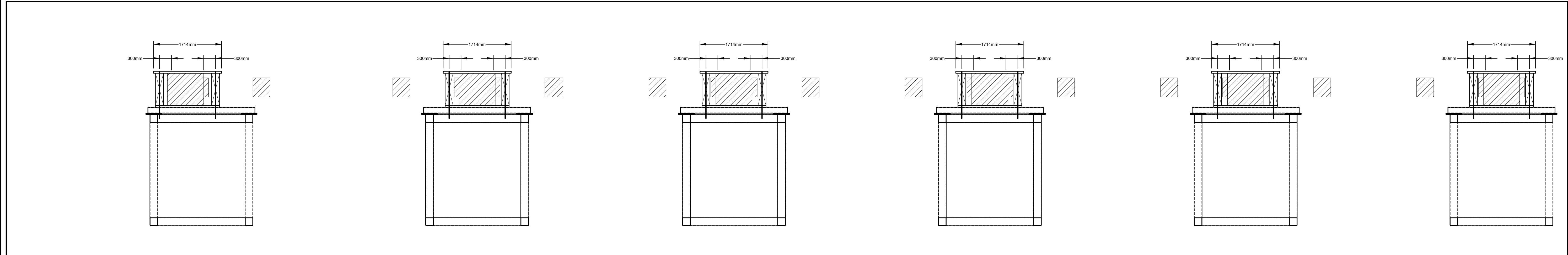
385 YONGE STREET - NORTH ELEVATION (GERRARD STREET) - TOWER BASE PLATE LOCATIONS (PARTIAL)

SCALE: 1:50



385 YONGE STREET - NORTH ELEVATION (GERRARD STREET) - SECOND AND THIRD FLOOR TOWER TO FACADE CONNECTION 1 PLAN (PARTIAL)

SCALE: 1:50



385 YONGE STREET - NORTH ELEVATION (GERRARD STREET) - SECOND TO THIRD FLOOR TOWER TO FACADE CONNECTION 2 PLAN (PARTIAL)

SCALE: 1:50

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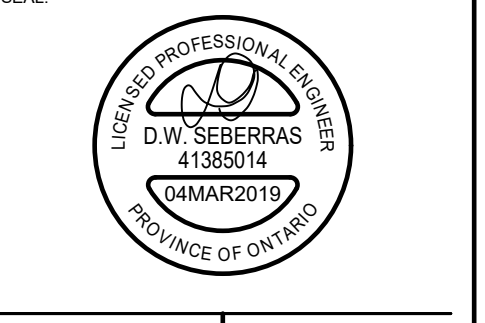
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Toronto Building
 PERMIT REVIEWED FOR COMPLIANCE WITH THE ONTARIO BUILDING CODE

19 148484 BLD 00

ZONING
 O.B.C. Krmanovic, Gordana 15/May/2019

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CHECKED BY: D.S. FIRM NO: 30361
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PROJECT LOCATION:
 YSL RESIDENCE
 385 YONGE STREET
 TORONTO, ON

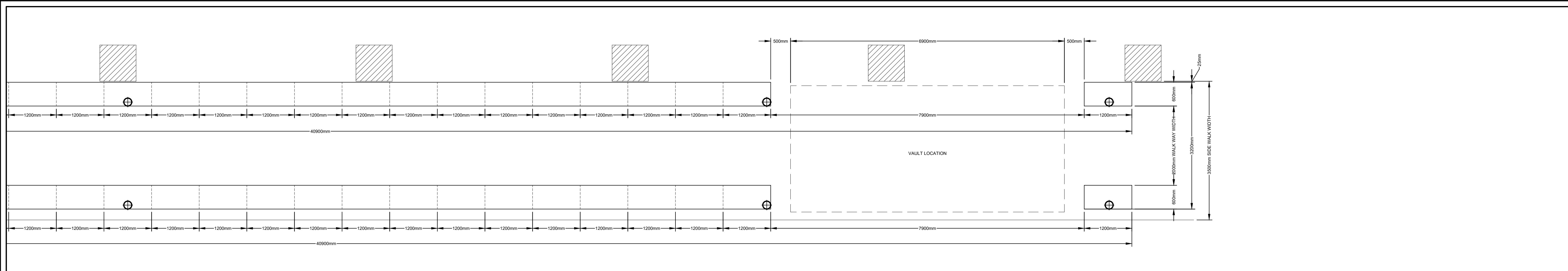
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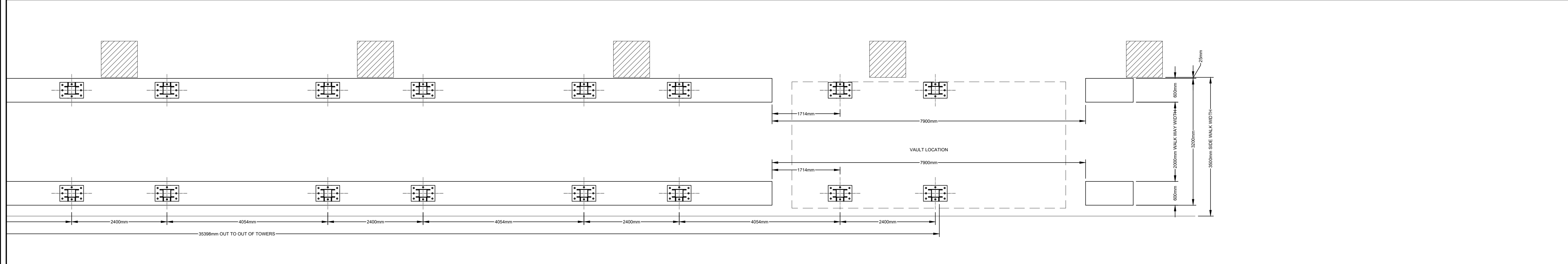
DRAWING TITLE:
 TOWER FRAME PLAN

PROJECT NO:
 201705
 SCALE:
 AS NOTED
 DRAWING NO:
HS-11



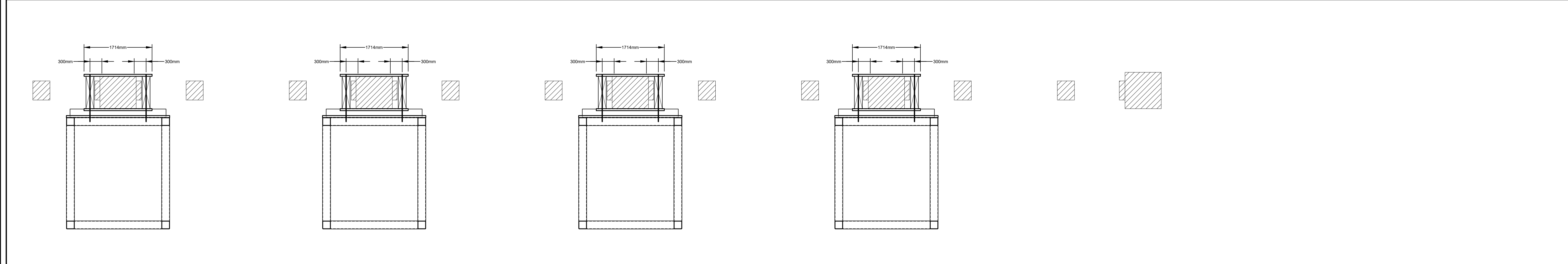
385 YONGE STREET - NORTH ELEVATION (GERRARD STREET) - CONCRETE BLOCK PLAN (PARTIAL)

SCALE: 1:50



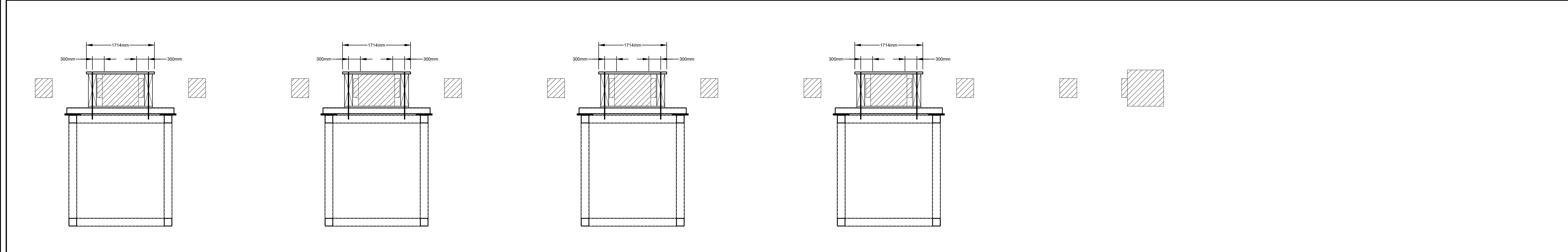
385 YONGE STREET - NORTH ELEVATION (GERRARD STREET) - TOWER BASE PLATE LOCATIONS (PARTIAL)

SCALE: 1:50



385 YONGE STREET - NORTH ELEVATION (GERRARD STREET) - SECOND AND THIRD FLOOR TOWER TO FACADE CONNECTION 1 PLAN (PARTIAL)

SCALE: 1:50



385 YONGE STREET - NORTH ELEVATION (GERRARD STREET) - SECOND TO THIRD FLOOR TOWER TO FACADE CONNECTION 2 PLAN (PARTIAL)

SCALE: 1:50

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TORONTO Building

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O.B.C.	Krsmanovic, Gordana	15/May/2019
FIRE SERVICES		
O.B.C. (S)		

CHECKED BY: D.S. FIRM NO: 30361

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SEAL:

Construction North

PROJECT LOCATION:
YSL RESIDENCE
385 YONGE STREET
TORONTO, ON

PROJECT DESCRIPTION:
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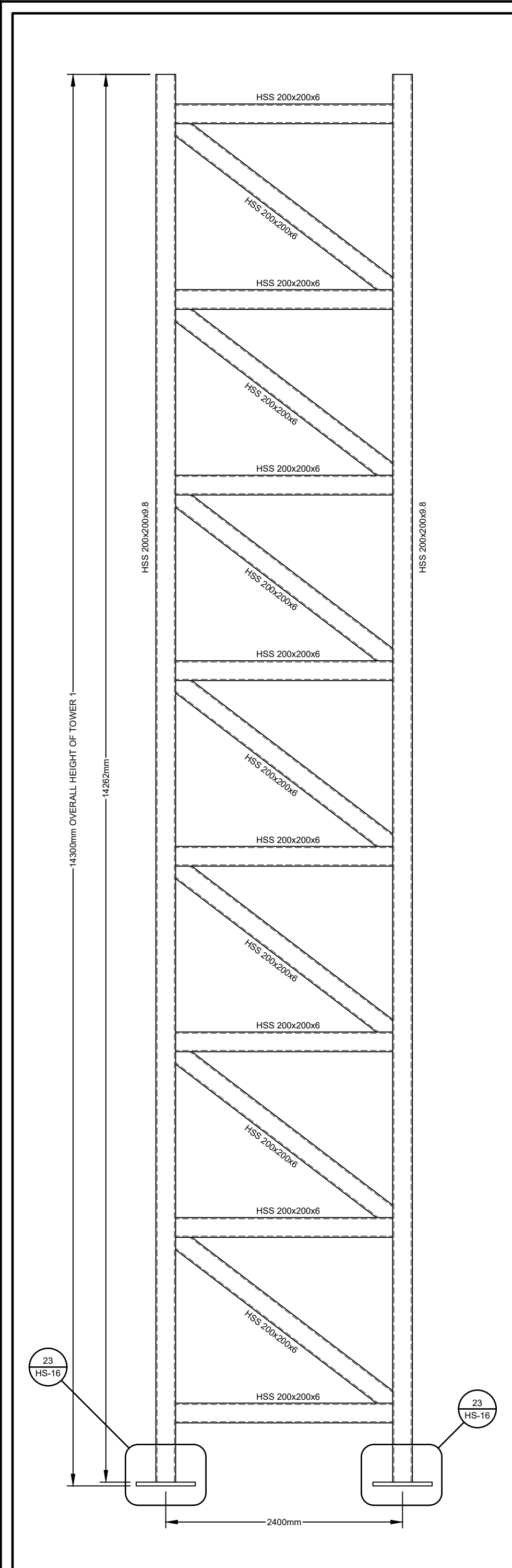
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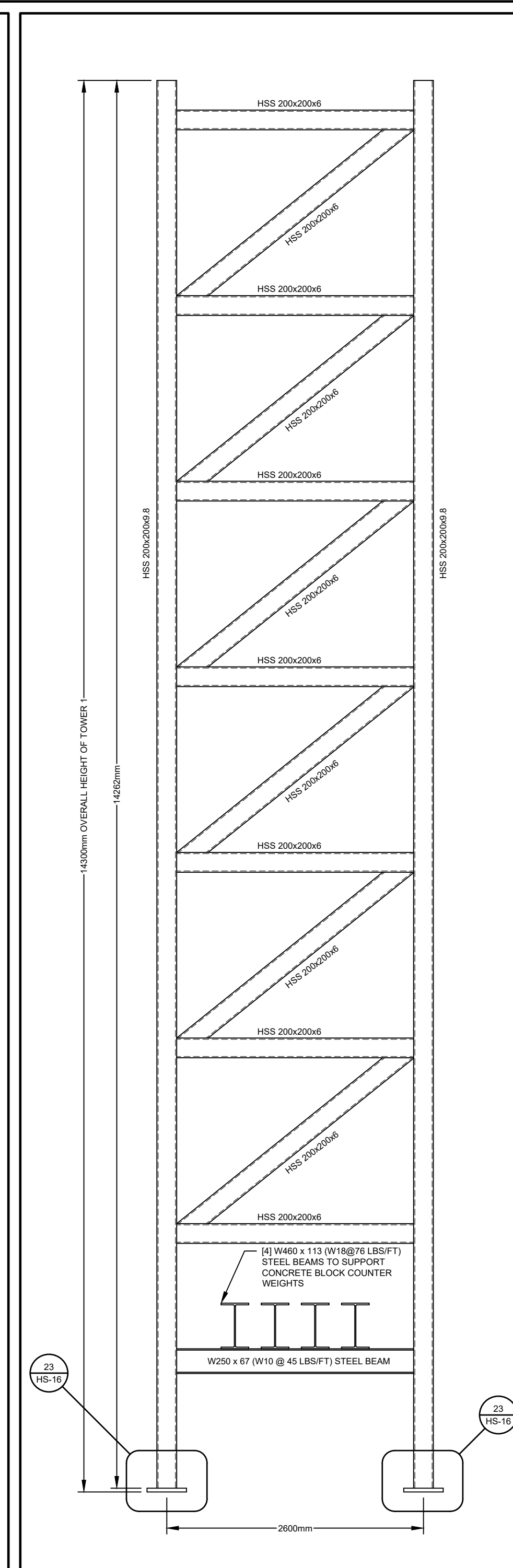
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TOWER FRAME PLAN

PROJECT NO: 201705
SCALE: AS NOTED

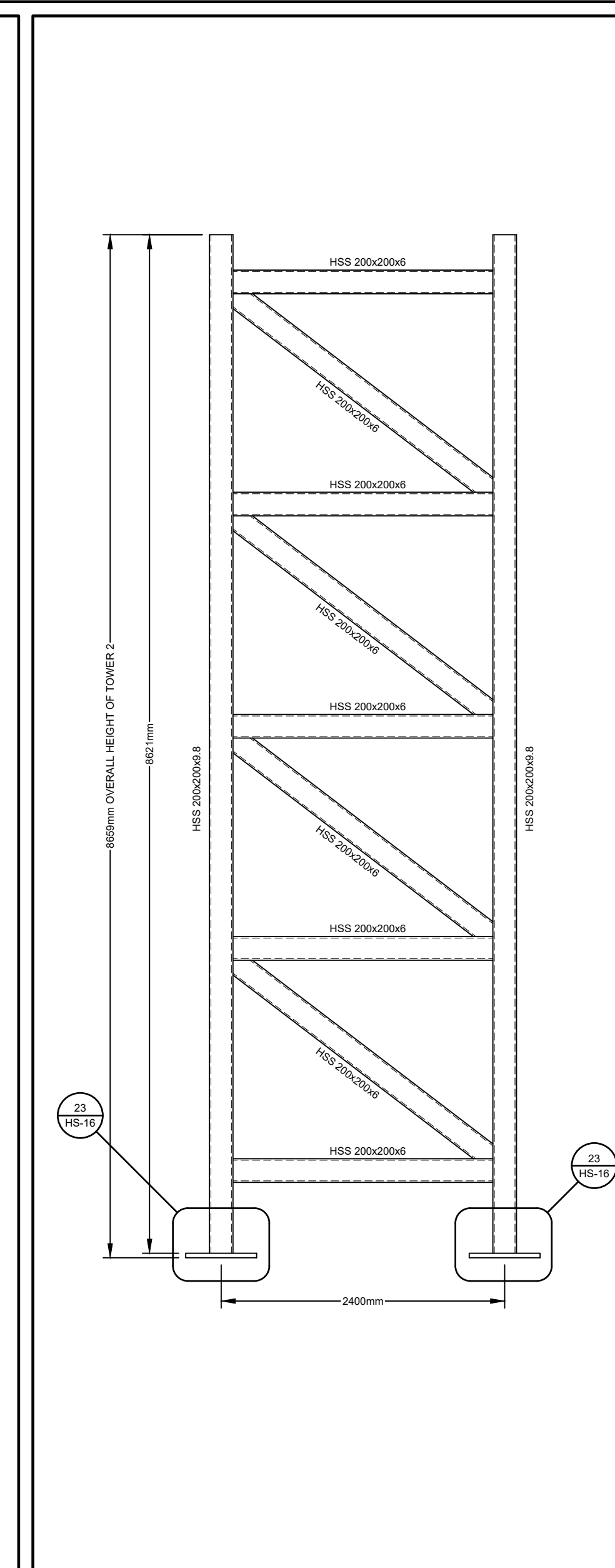
DRAWING NO: **HS-12**



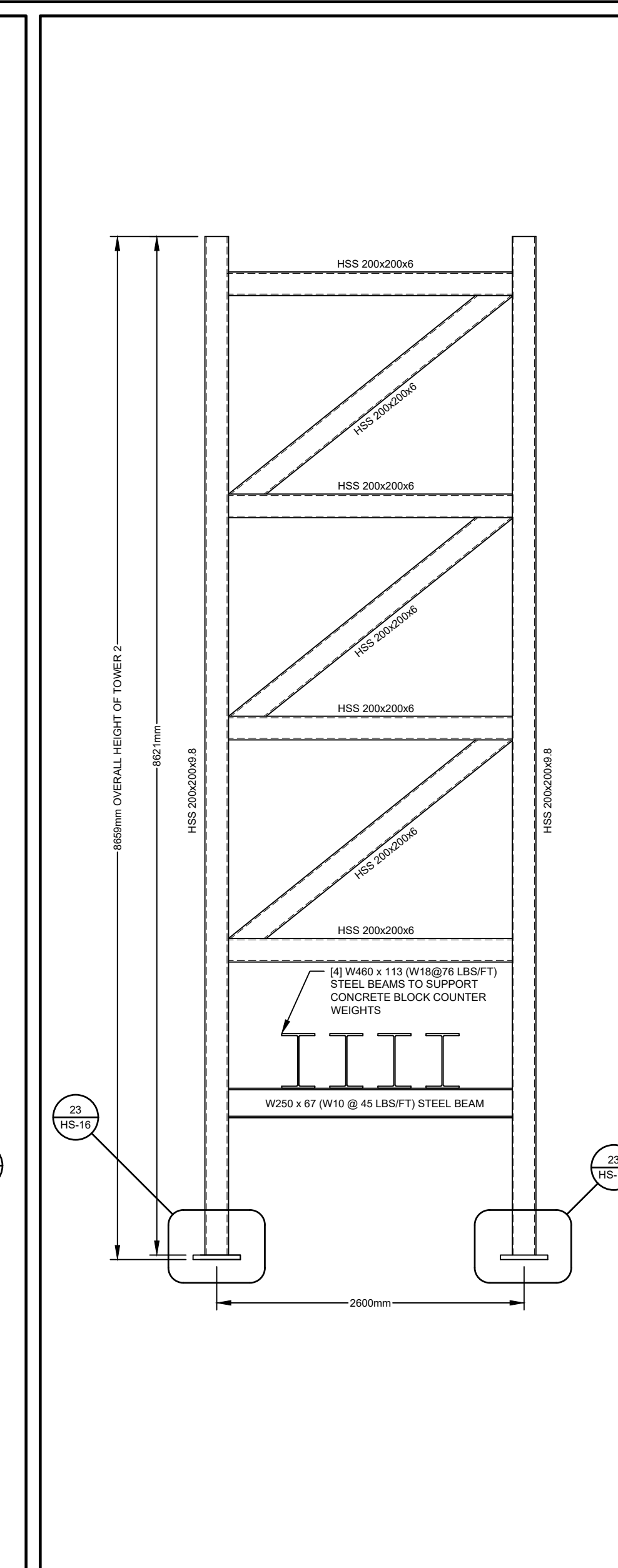
DETAIL 1: TOWER 1 FRONT/REAR ELEVATION
SCALE: 1:40



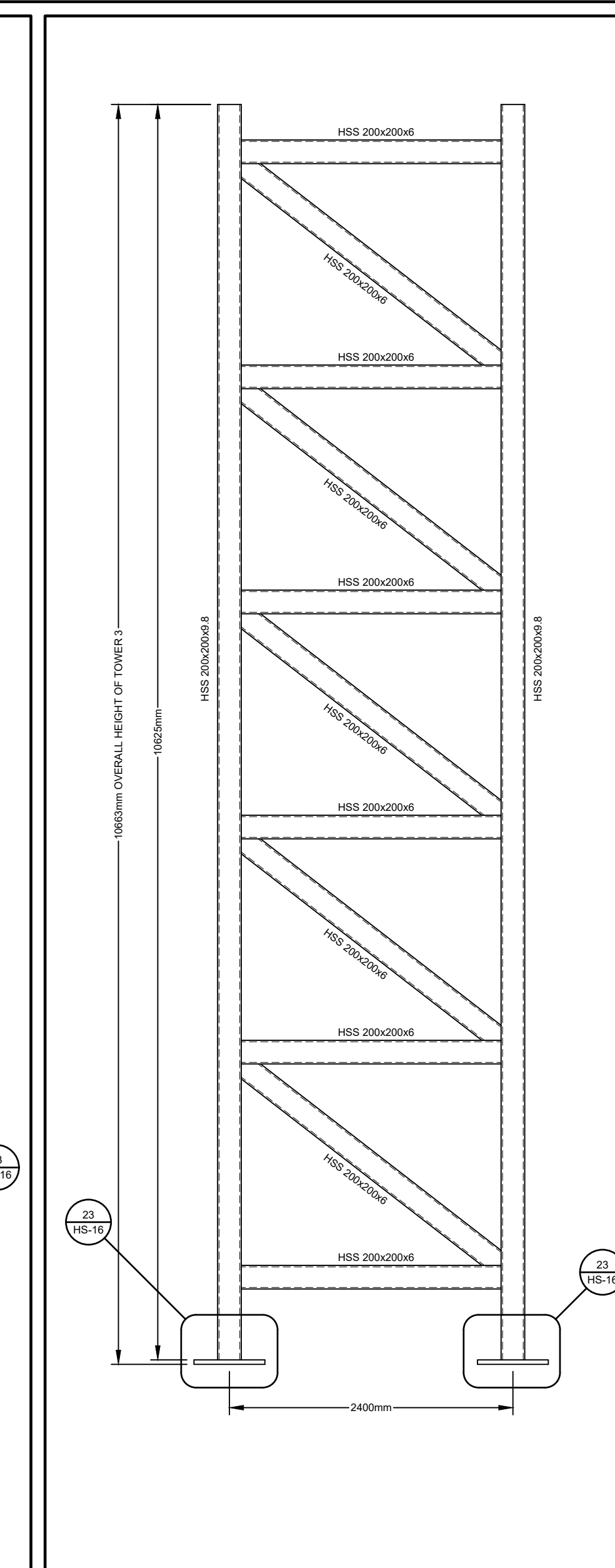
DETAIL 2: TOWER 1 SIDE ELEVATION
SCALE: 1:40



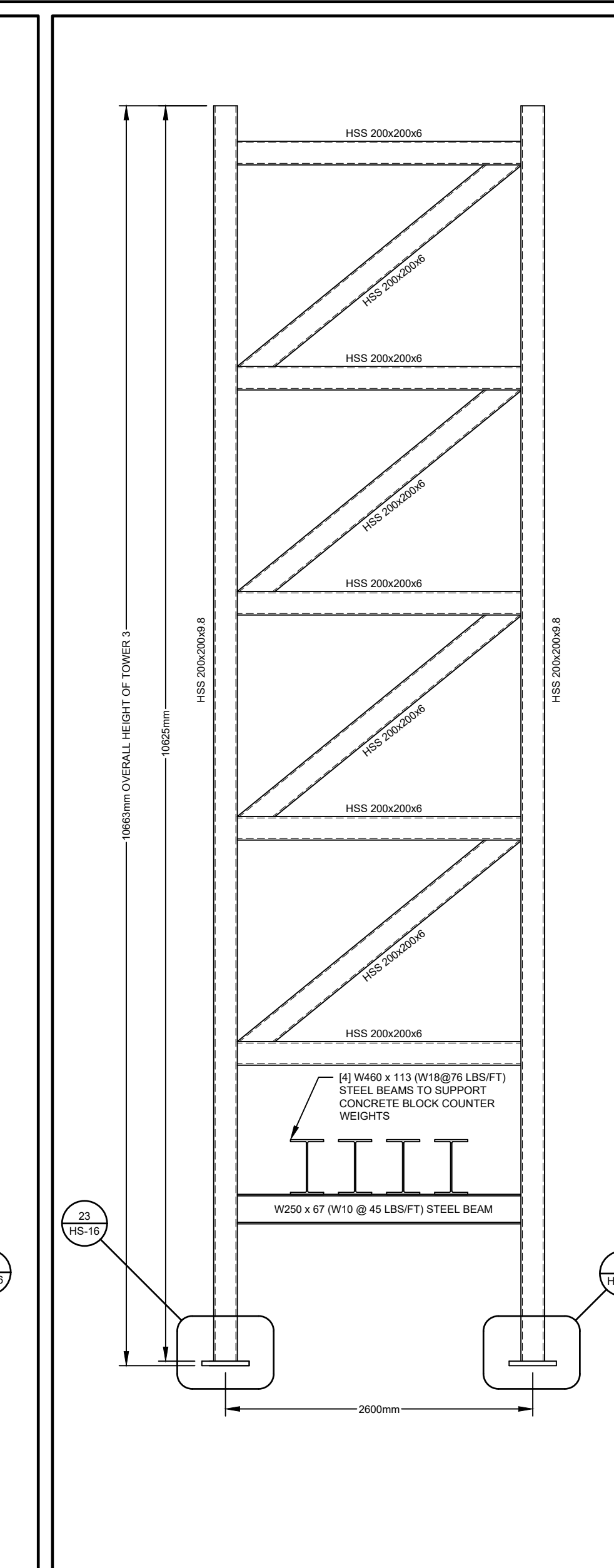
DETAIL 3: TOWER 2 FRONT/REAR ELEVATION
SCALE: 1:40



DETAIL 4: TOWER 2 SIDE ELEVATION
SCALE: 1:40



DETAIL 5: TOWER 3 FRONT/REAR ELEVATION
SCALE: 1:40



DETAIL 6: TOWER 3 SIDE ELEVATION
SCALE: 1:40

CONCRETE NOTE:
MINIMUM CONCRETE STRENGTH: 40 MPa
FILTER CLOTH TO BE PLACED UNDER GRANULAR BASE (TYP)

WELDING NOTES:
1. HSS WELD:
1.1. 9mm THICK WALL
1.2. 6mm FILLET WELD, CONTINUOUS ALL SIDES
1.3. 7018 WELDING ROD

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Toronto Building
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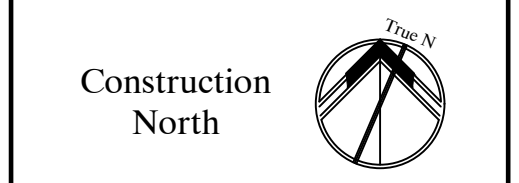
19 148484 BLD 00

ZONING	
O.B.C.	Krsmanovic, Gordana 15/May/2019
FIRE SERVICES	
O.B.C. (S)	



CHECKED BY: D.S.
DRAWN BY: B.B.

FIRM NO: 30361



PROJECT LOCATION:
YSL RESIDENCE
385 YONGE STREET
TORONTO, ON

PROJECT DESCRIPTION:
EXISTING HISTORICAL
FACADE RETENTION

Facet Group Inc.
Heritage Building Consultants,
Engineering and Project Management
716 - 228 Queens Quay West
Toronto, Ontario M5J 2X1
Tel: 416-409-0772 | Fax: 416-409-2453
www.facetgroup.ca | neil@facetgroup.ca

David Seberras P. Eng.
SEBERRAS PROFESSIONAL SERVICES LTD

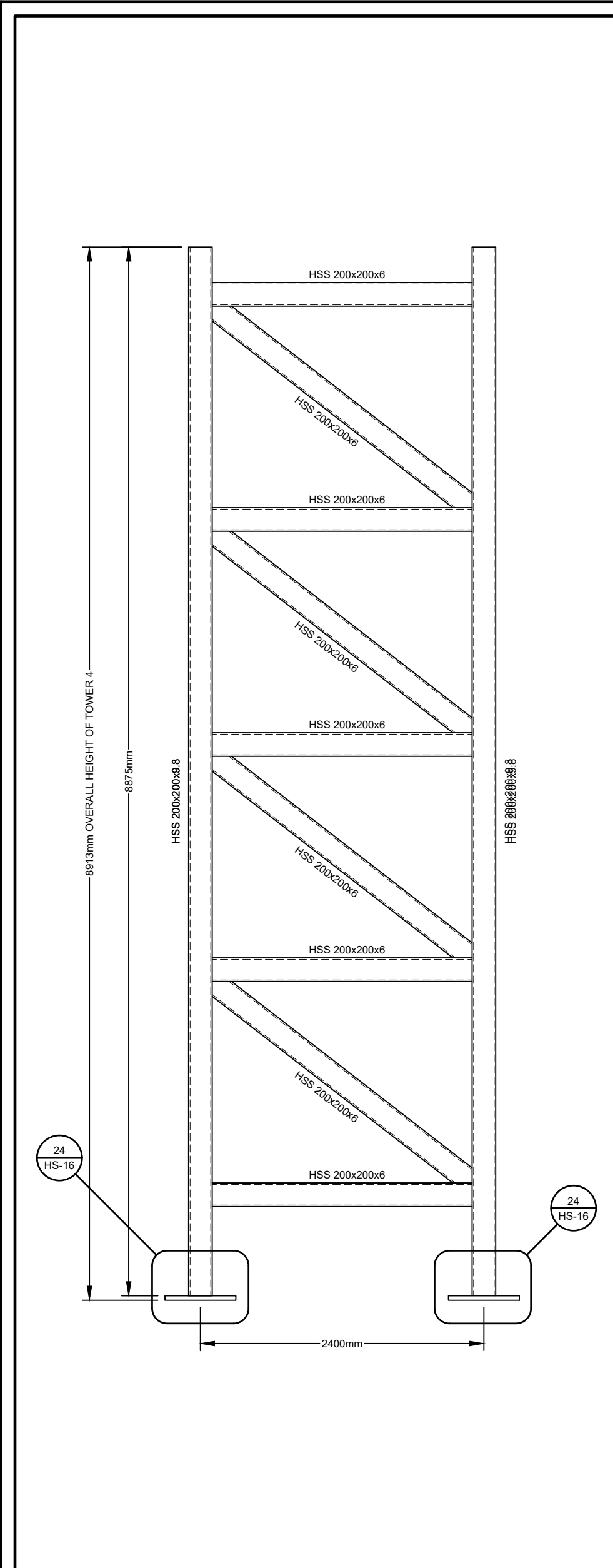
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Entuitive Corporation
200 University Avenue, 7th Floor
Toronto, ON M5H 3C9 Canada
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T. 416 477 5832

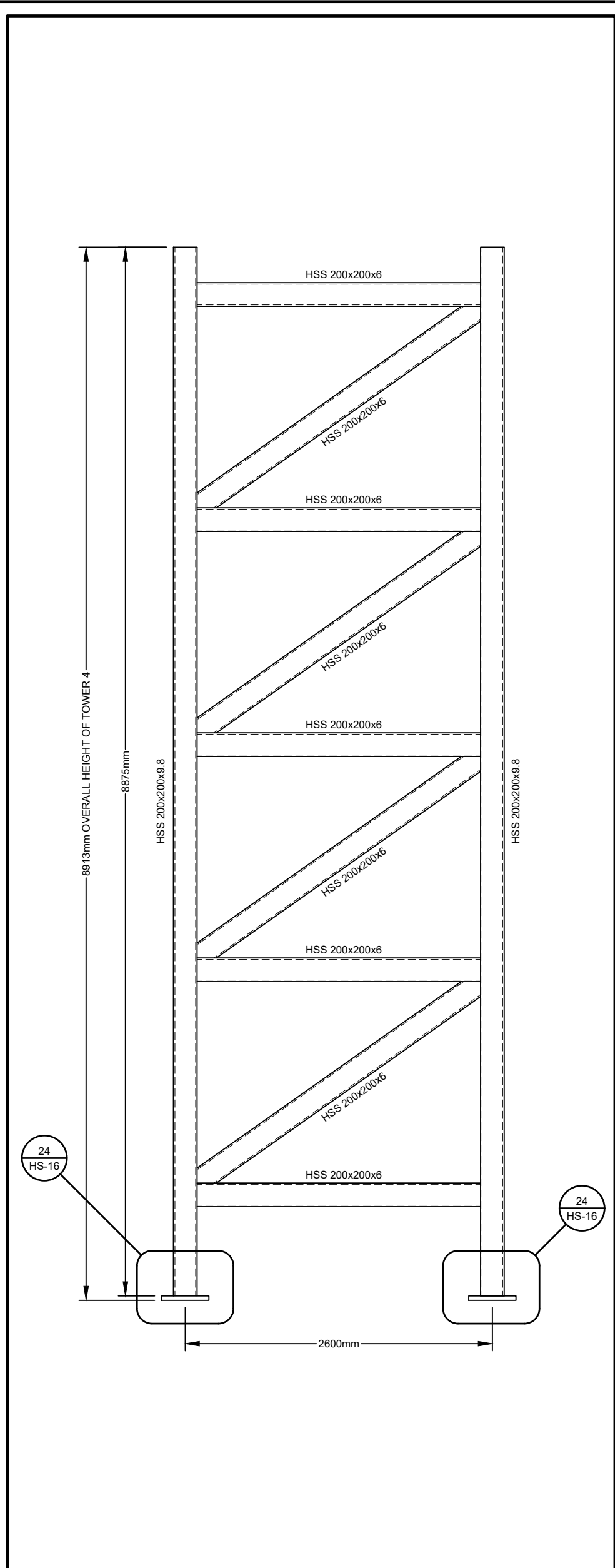
DRAWING TITLE:
TOWER FRAME PLAN

PROJECT NO: 201705
SCALE: AS NOTED

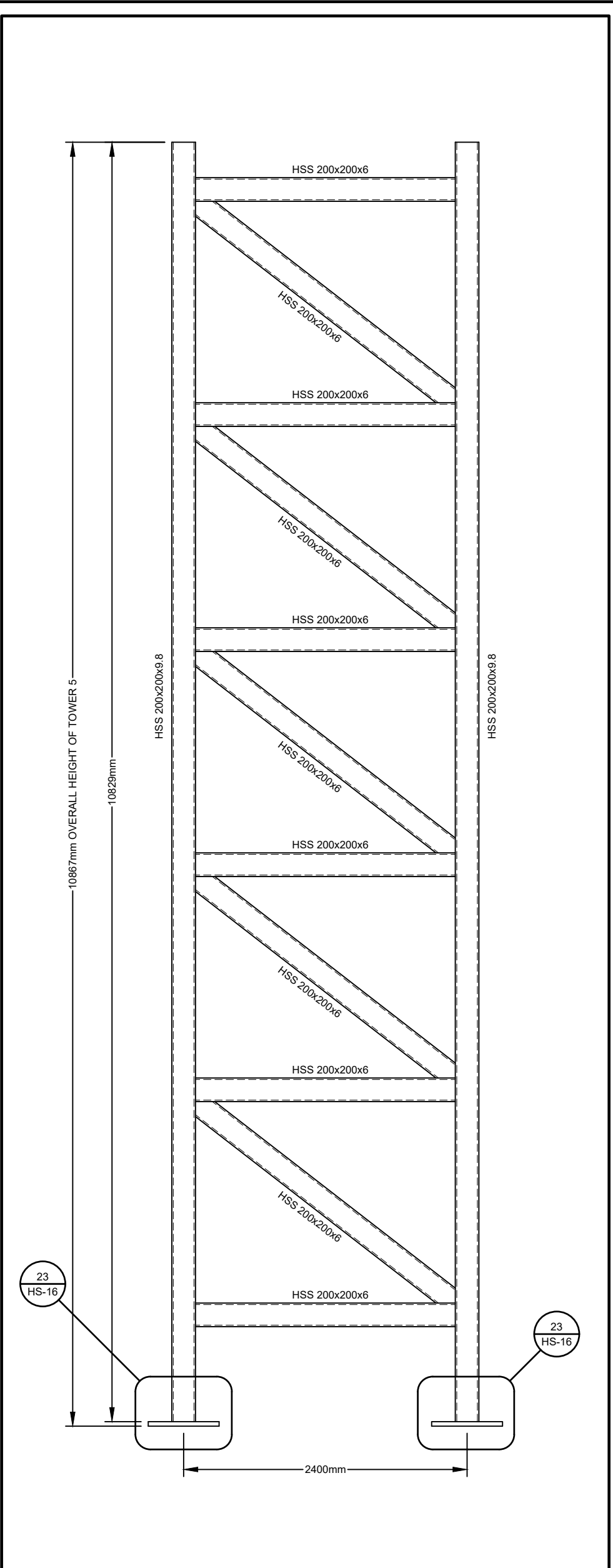
DRAWING NO: **HS-13**



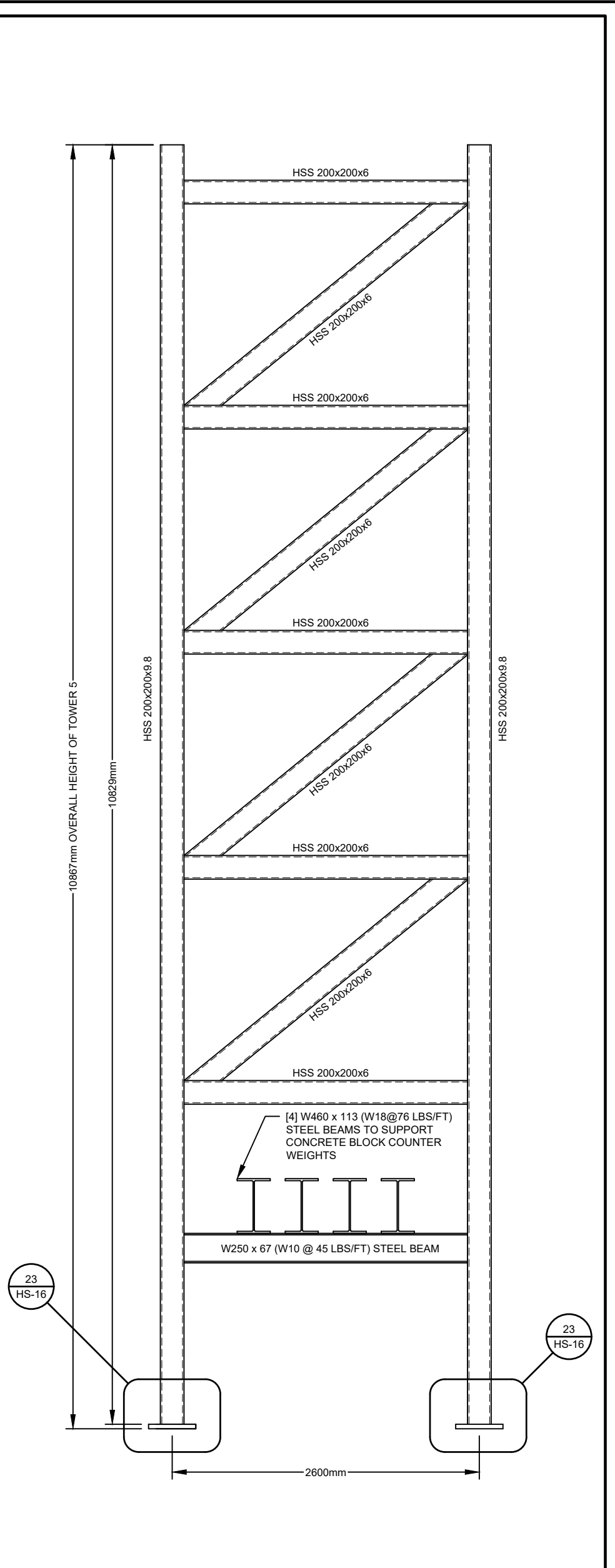
DETAIL 7: TOWER 4 FRONT/REAR ELEVATION
SCALE: 1:40



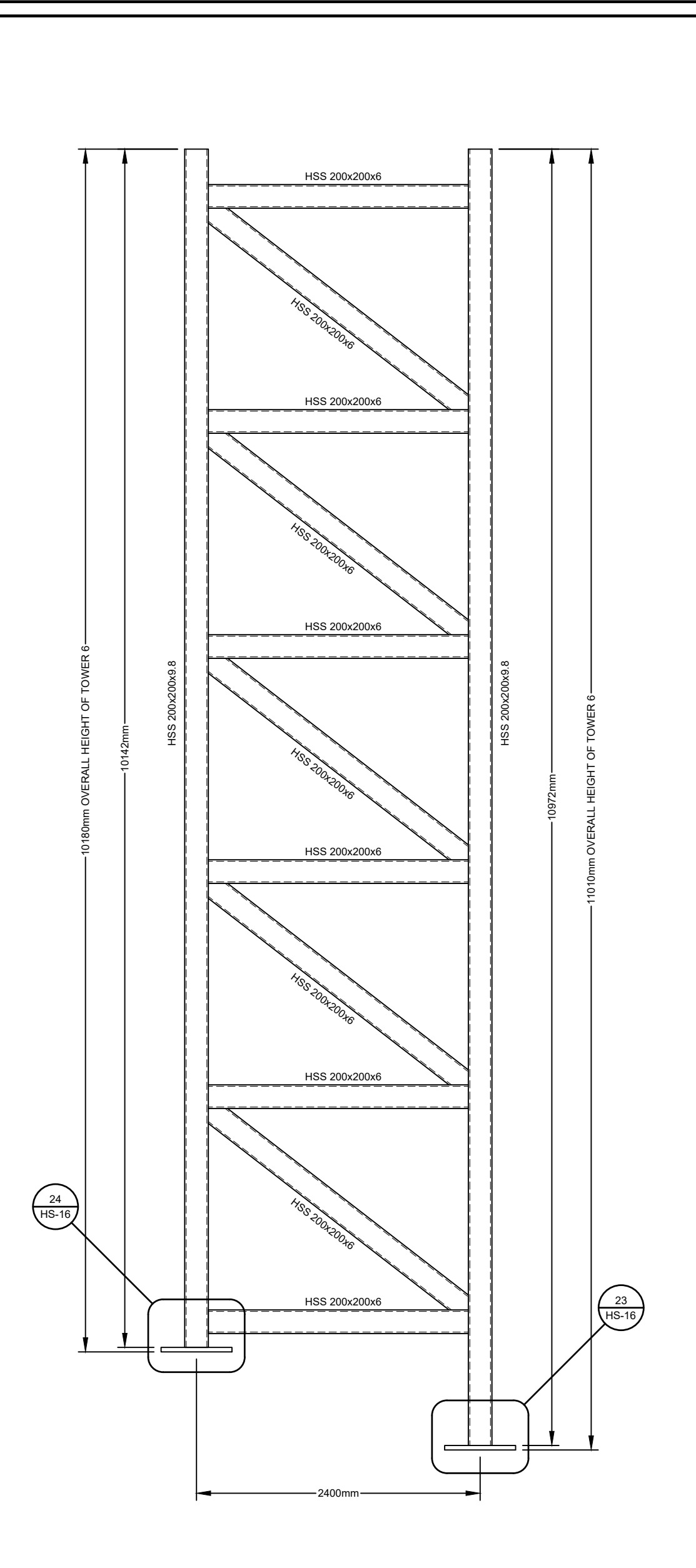
DETAIL 8: TOWER 4 SIDE ELEVATION
SCALE: 1:40



DETAIL 9: TOWER 5 FRONT/REAR ELEVATION
SCALE: 1:40



DETAIL 10: TOWER 5 SIDE ELEVATION
SCALE: 1:40



DETAIL 11: TOWER 6 FRONT ELEVATION
SCALE: 1:40

CONCRETE NOTE:

MINIMUM CONCRETE STRENGTH: 40 MPa
FILTER CLOTH TO BE PLACED UNDER GRANULAR BASE (TYP)

WELDING NOTES:

1. HSS WELD:
- 1.1. 9mm THICK WALL
- 1.2. 6mm FILLET WELD, CONTINUOUS ALL SIDES
- 1.3. Z018 WELDING ROD

DO NOT SCALE DRAWINGS

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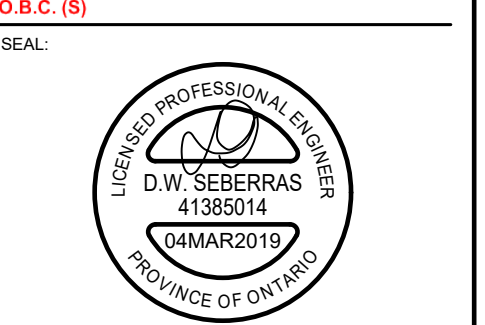
SECTION/DETAIL NUMBER
DWG No. WHERE DETAILED

No.	Revision	Date
1	ISSUED FOR GENERAL REVIEW	30 MAY 2017
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5	ISSUED FOR TENDER	29 JAN 2019
6	RE-ISSUED FOR BUILDING PERMIT	04 MAR 2019

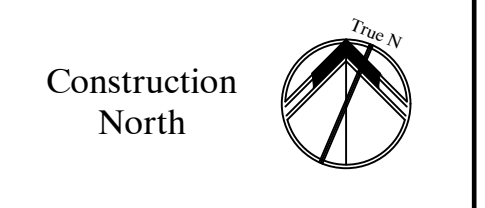


19 148484 BLD 00

ZONING	
O.B.C.	Krsmanovic, Gordana 15/May/2019
FIRE SERVICES	
O.B.C. (S)	



CHECKED BY:	FIRM NO:
D.S.	30361
DRAWN BY:	
B.B.	



PROJECT LOCATION:
YSL RESIDENCE
385 YONGE STREET
TORONTO, ON

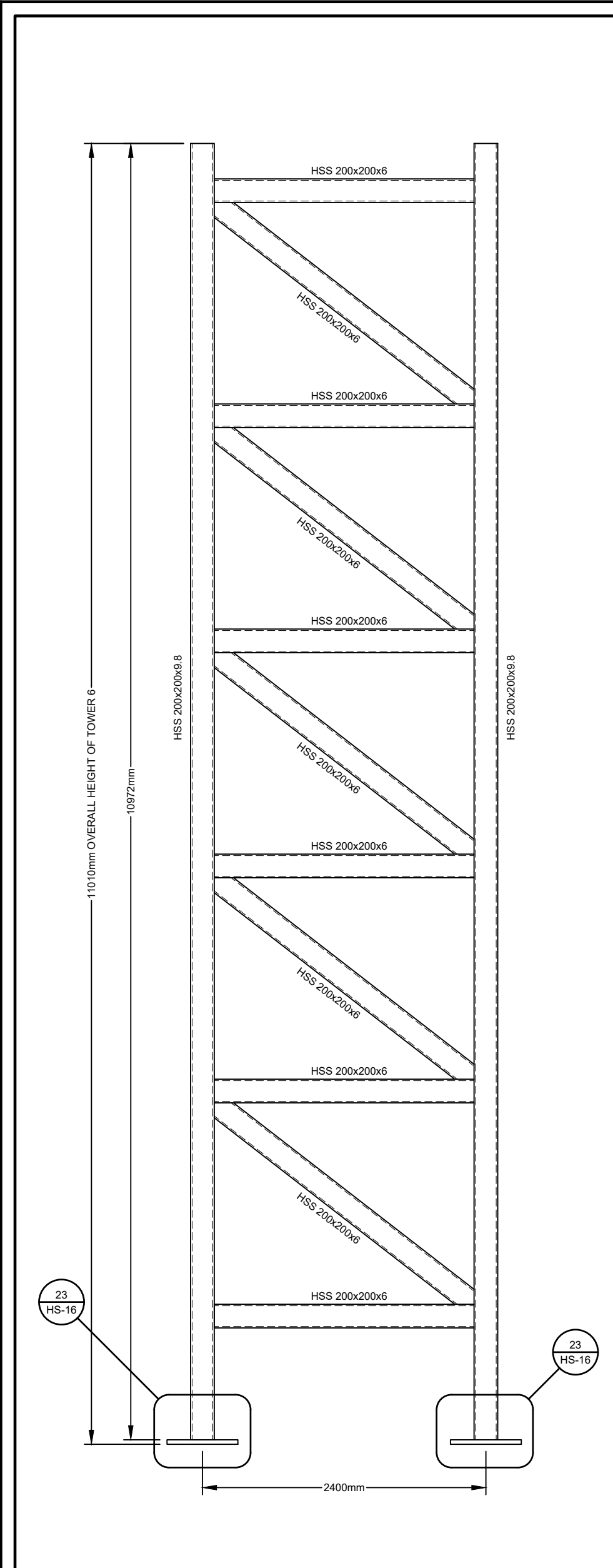
PROJECT DESCRIPTION:
EXISTING HISTORICAL
FACADE RETENTION

Facet Group Inc.
Heritage Building Consultants,
Engineering and Project Management
716 - 228 Queens Quay West
Toronto, Ontario M5J 2X1
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www.facetgroup.ca | neil@facetgroup.ca
David Seberras P. Eng.
SEBERRAS PROFESSIONAL SERVICES LTD

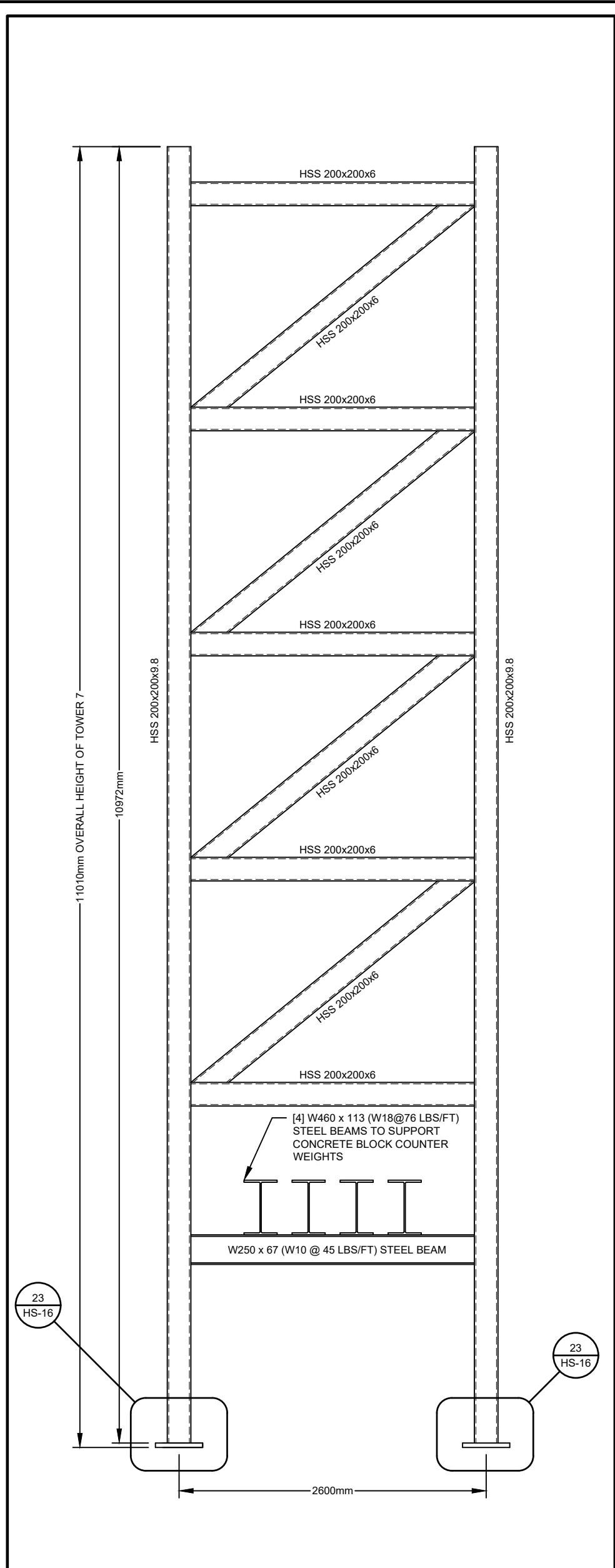
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Entuitive Corporation
200 University Avenue, 7th Floor
Toronto, ON M5H 3C9 Canada
entuitive.com
T. 416 477 5832

DRAWING TITLE:
TOWER FRAME PLAN

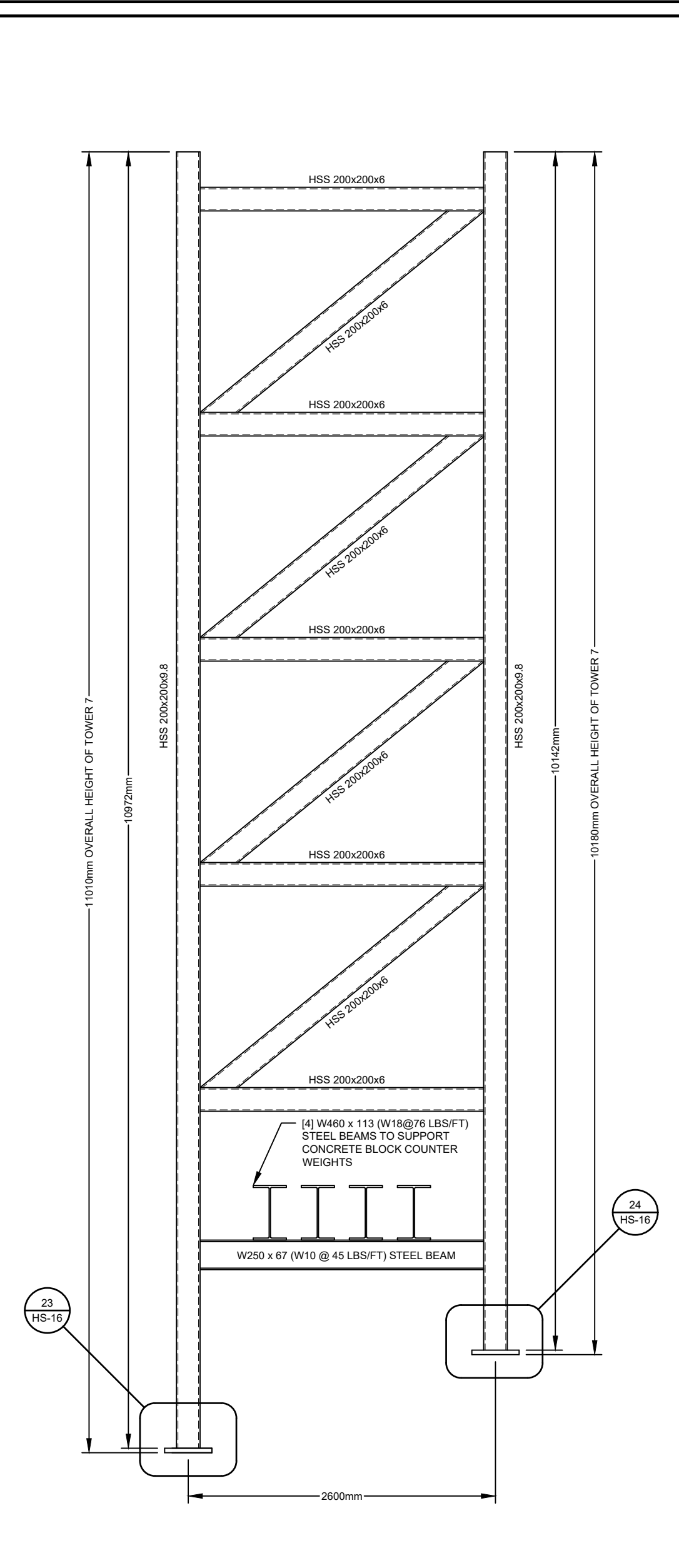
PROJECT NO: 201705	DRAWING NO: HS-14
SCALE: AS NOTED	



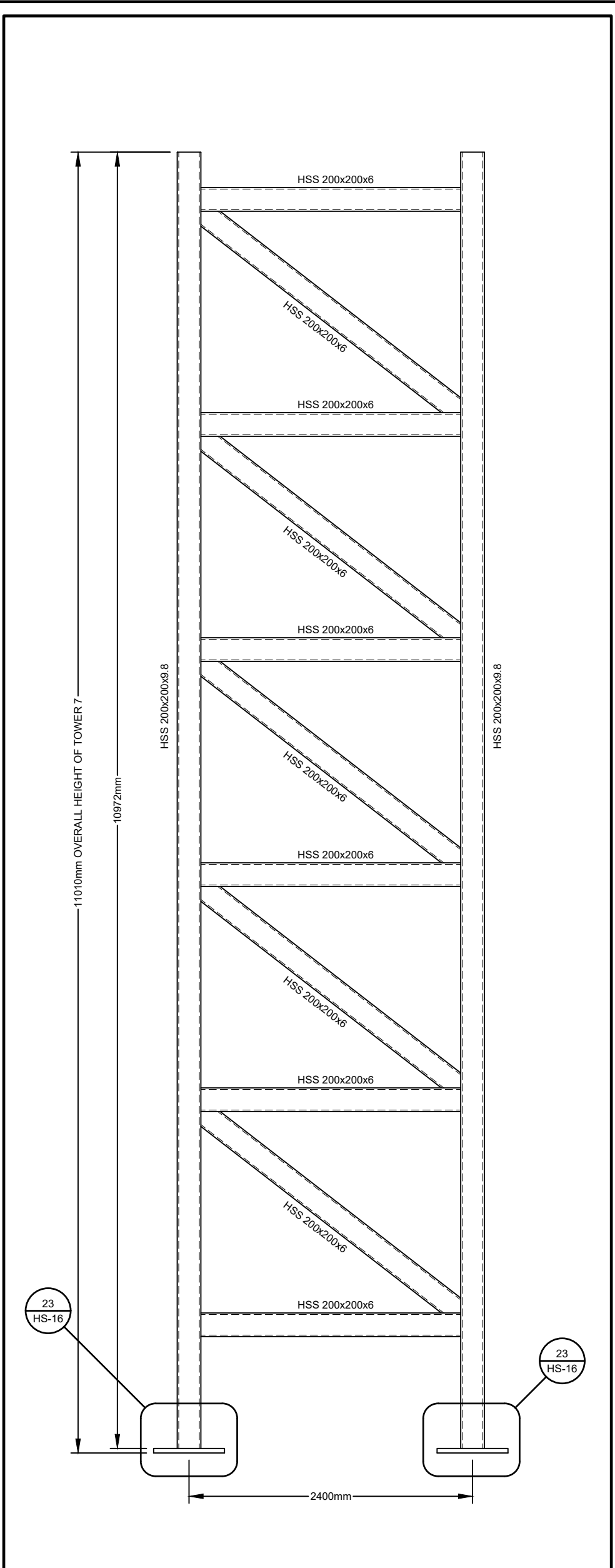
DETAIL 12: TOWER 6 REAR ELEVATION
SCALE: 1:40



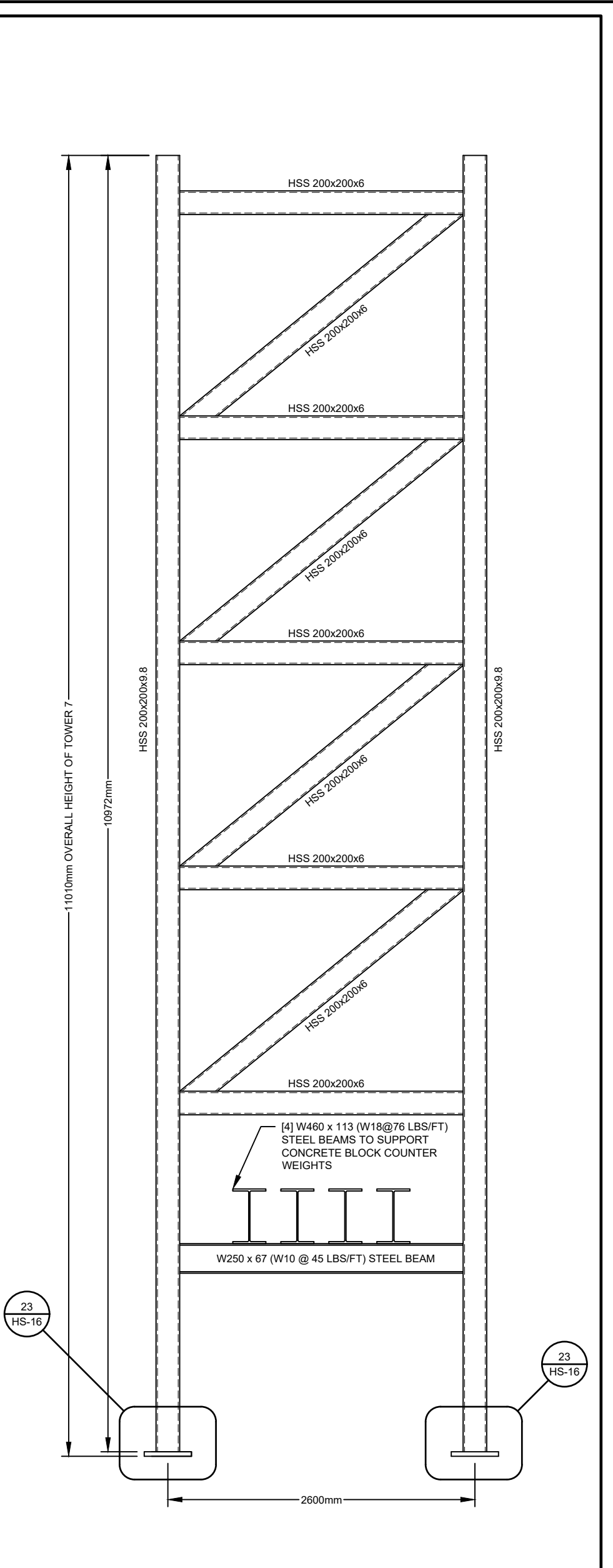
DETAIL 13: TOWER 6 SIDE ELEVATION 1
SCALE: 1:40



DETAIL 14: TOWER 6 SIDE ELEVATION 2
SCALE: 1:40



DETAIL 15: TOWER 7 FRONT/REAR ELEVATION
SCALE: 1:40



DETAIL 16: TOWER 7 SIDE ELEVATION
SCALE: 1:40

CONCRETE NOTE:
MINIMUM CONCRETE STRENGTH: 40 MPa
FILTER CLOTH TO BE PLACED UNDER GRANULAR BASE (TYP)

WELDING NOTES:
1. HSS WELD:
1.1. 9mm THICK WALL
1.2. 6mm FILLET WELD, CONTINUOUS ALL SIDES
1.3. 7018 WELDING ROD

DO NOT SCALE DRAWINGS

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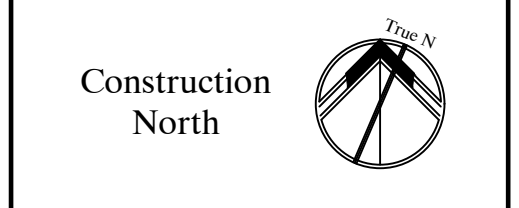
TORONTO Building
PERMIT REVIEWED FOR COMPLIANCE WITH THE ONTARIO BUILDING CODE

19 148484 BLD 00

ZONING	O.B.C.	Krsmanovic, Gordana	15/May/2019
FIRE SERVICES	O.B.C. (S)		



CHECKED BY: D.S.
DRAWN BY: B.B.
FIRM NO: 30361



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TORONTO, ON

PROJECT DESCRIPTION:
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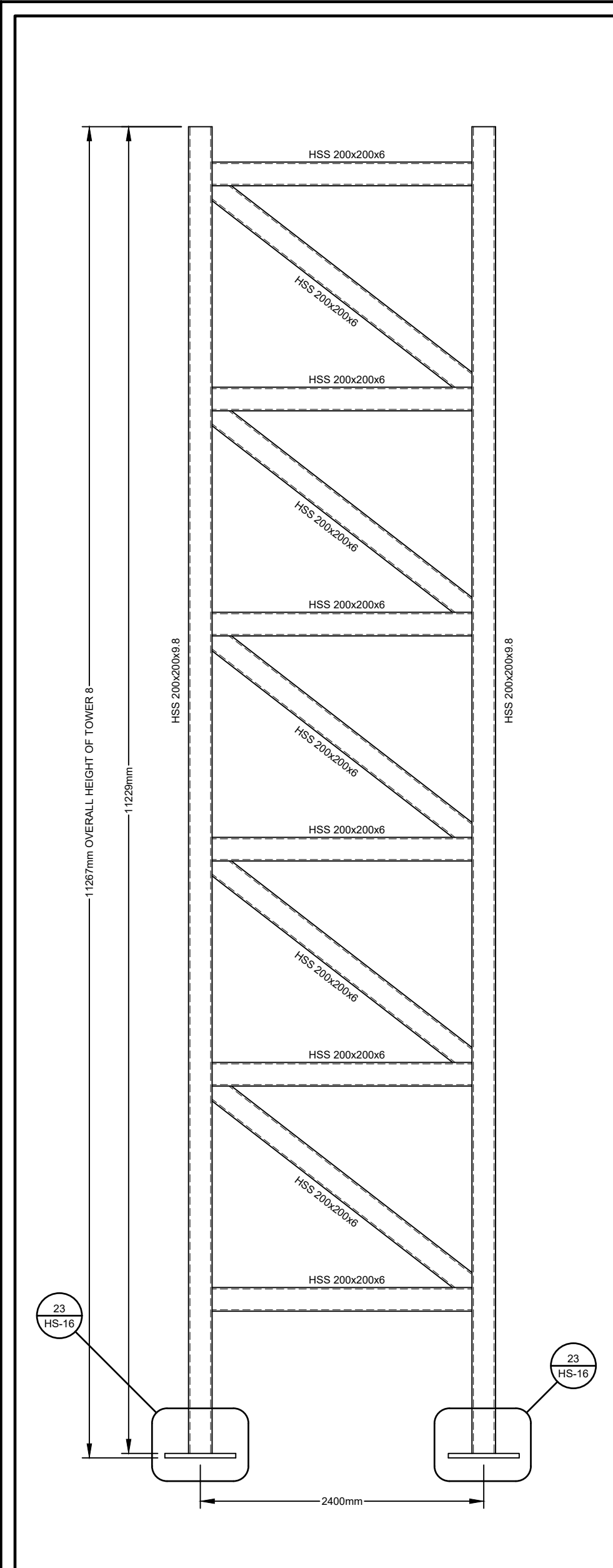
Facet Group Inc.
Heritage Building Consultants,
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Toronto, Ontario M5J 2X1
Tel: 416-409-0772 | Fax: 416-409-2453
www.facetgroup.ca | neil@facetgroup.ca

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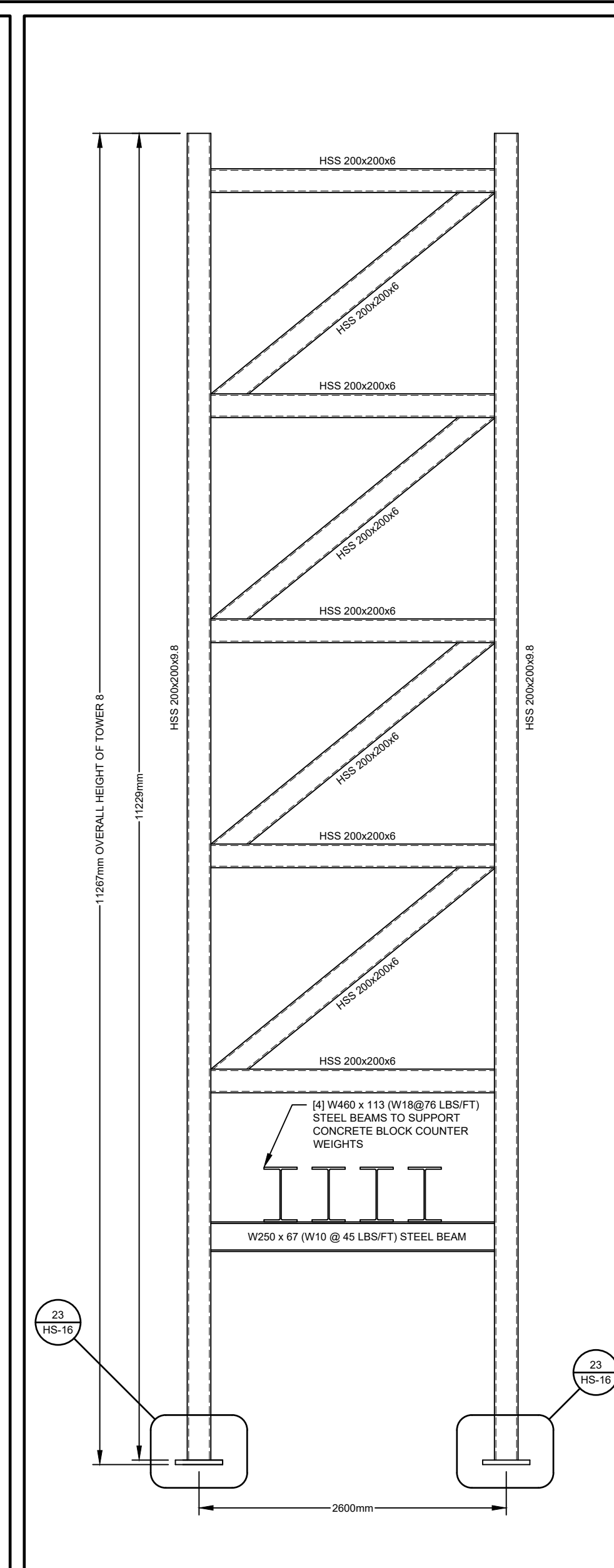
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Entuitive Corporation
200 University Avenue, 7th Floor
Toronto, ON M5H 3C9 Canada
entuitive.com

DRAWING TITLE:
TOWER FRAME PLAN

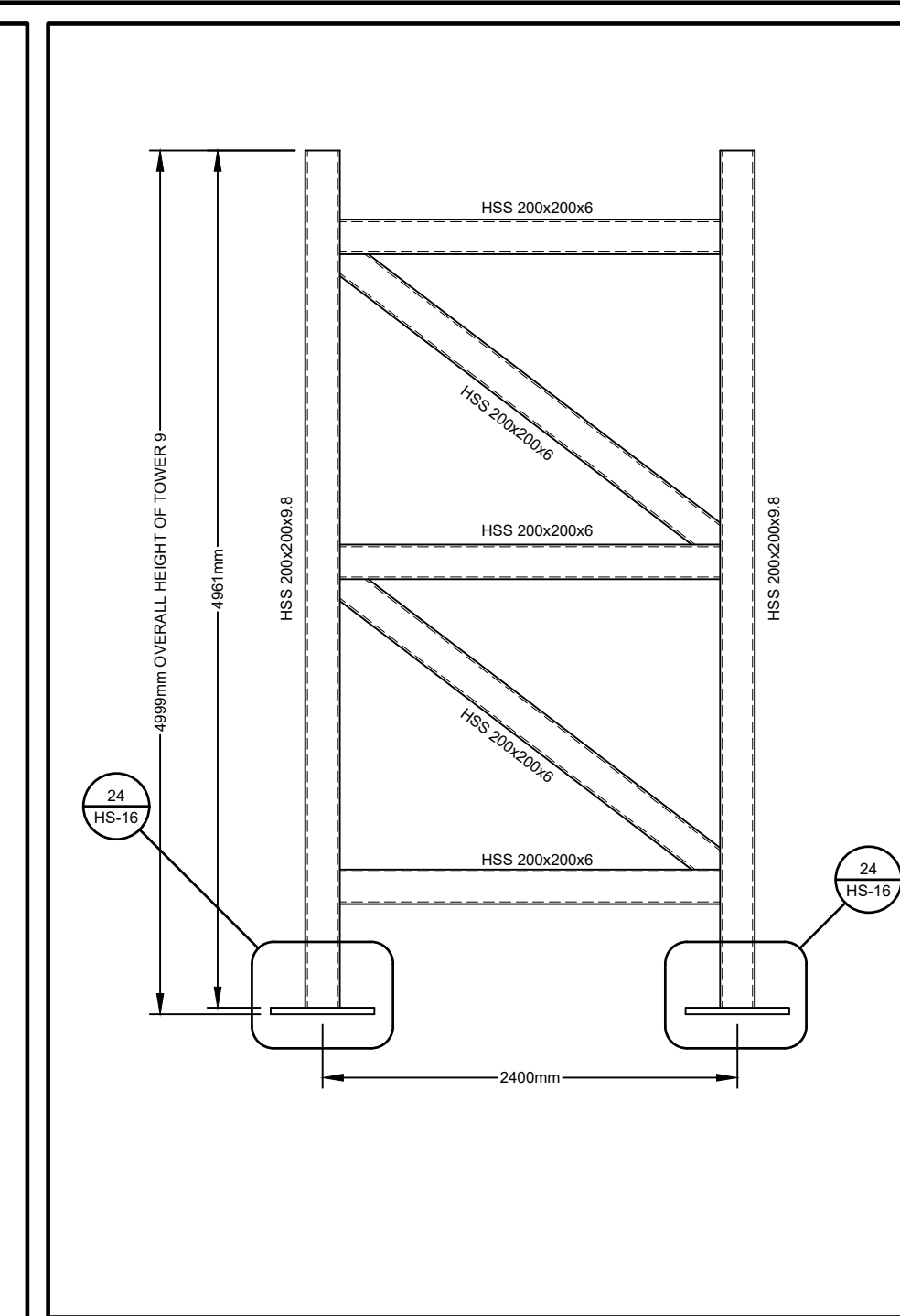
PROJECT NO: 201705
SCALE: AS NOTED
DRAWING NO: HS-15



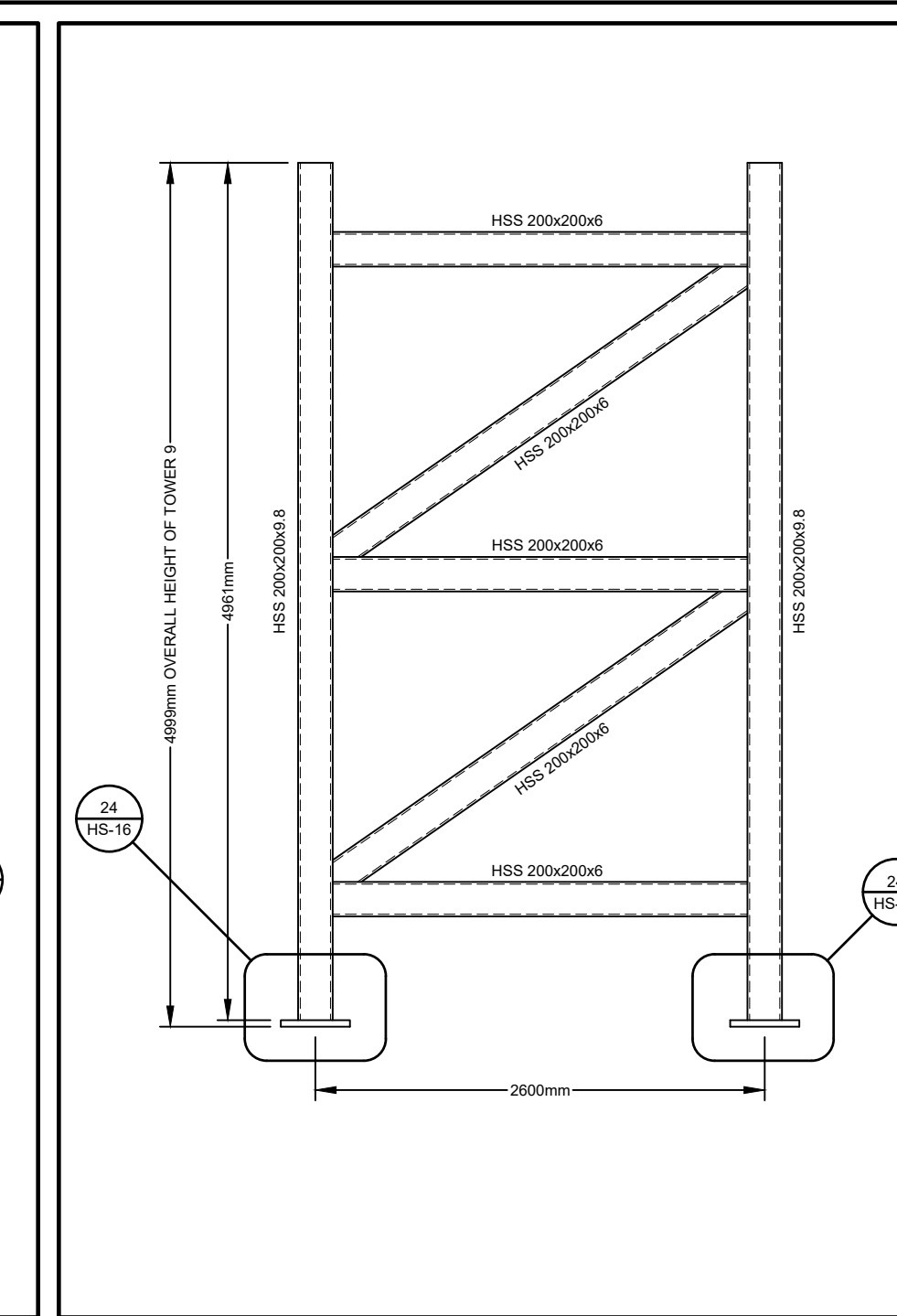
DETAIL 17: TOWER 8 FRONT/REAR ELEVATION
SCALE: 1:40



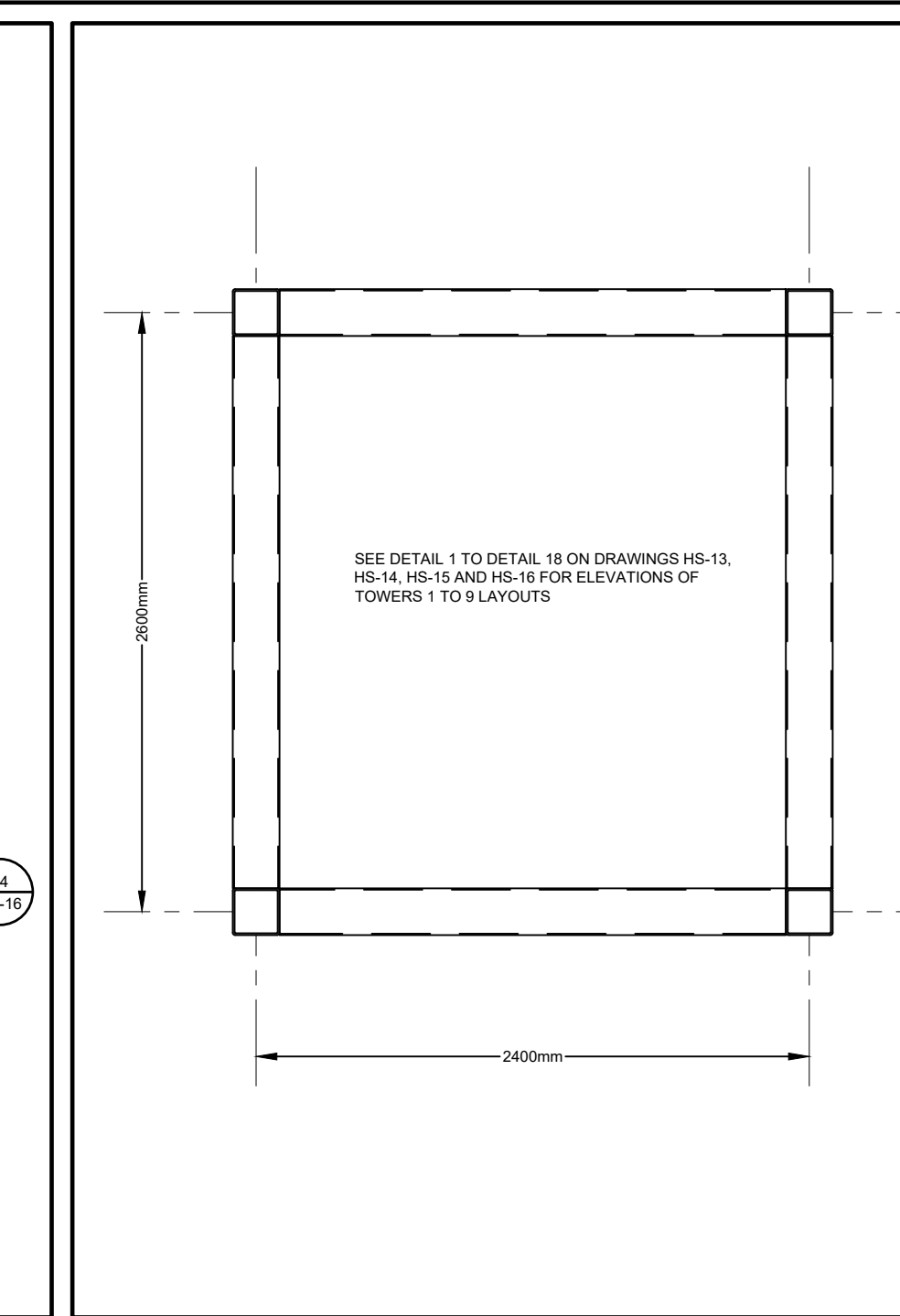
DETAIL 18: TOWER 8 SIDE ELEVATION
SCALE: 1:40



DETAIL 19: TOWER 9 FRONT/REAR ELEVATION
SCALE: 1:40



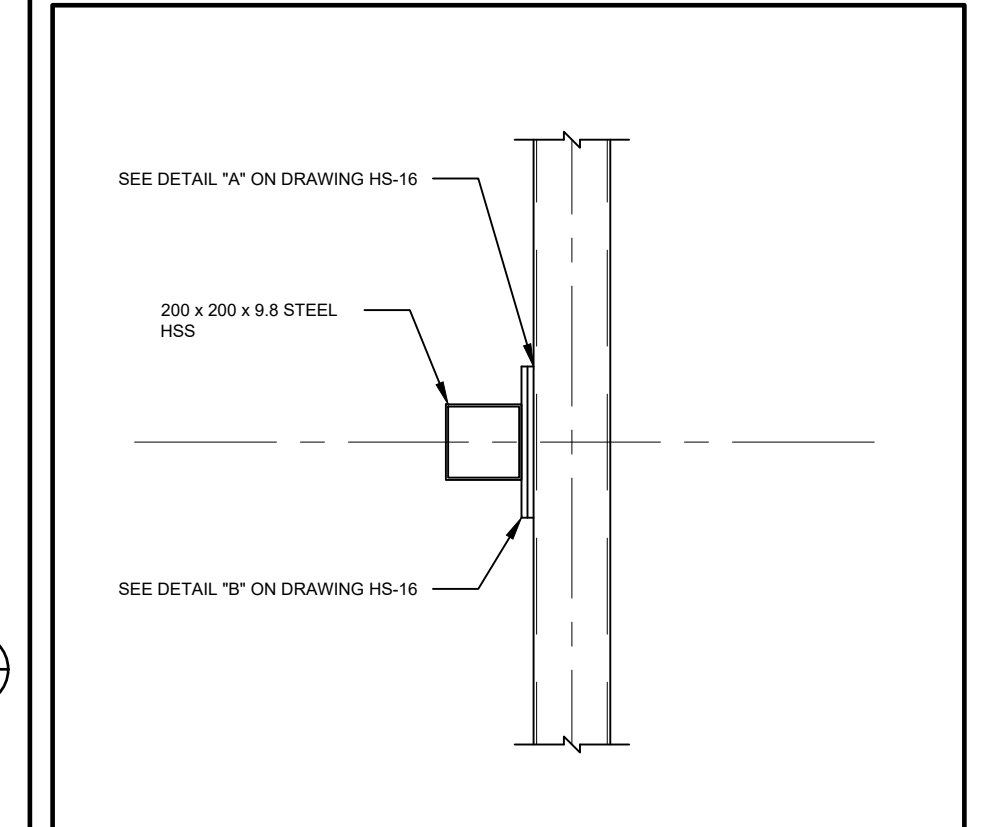
DETAIL 20: TOWER 9 SIDE ELEVATION
SCALE: 1:40



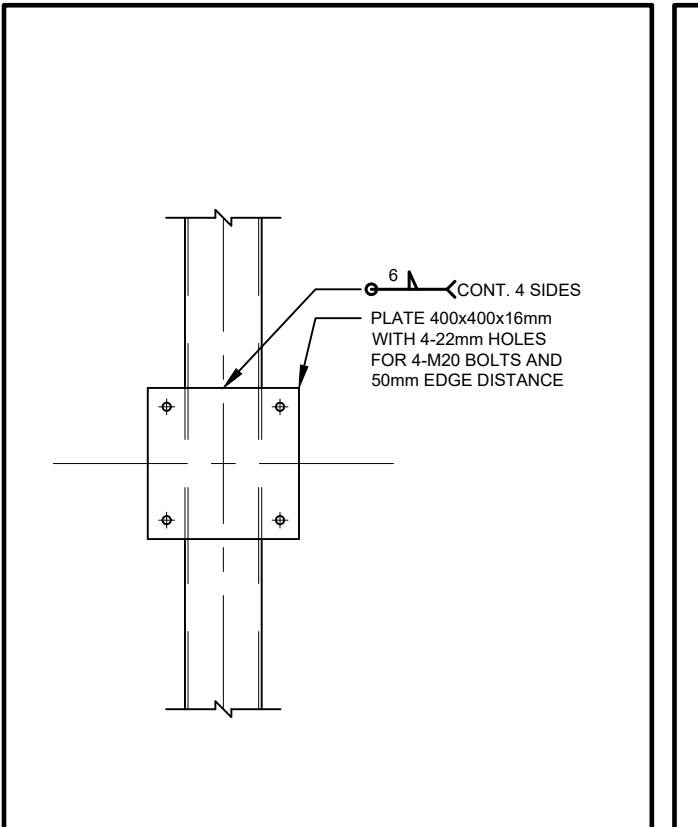
DETAIL 21: TOWER OVERHEAD VIEW
SCALE: 1:30

CONCRETE NOTE:
MINIMUM CONCRETE STRENGTH: 40 MPa
FILTER CLOTH TO BE PLACED UNDER GRANULAR BASE (TYP)

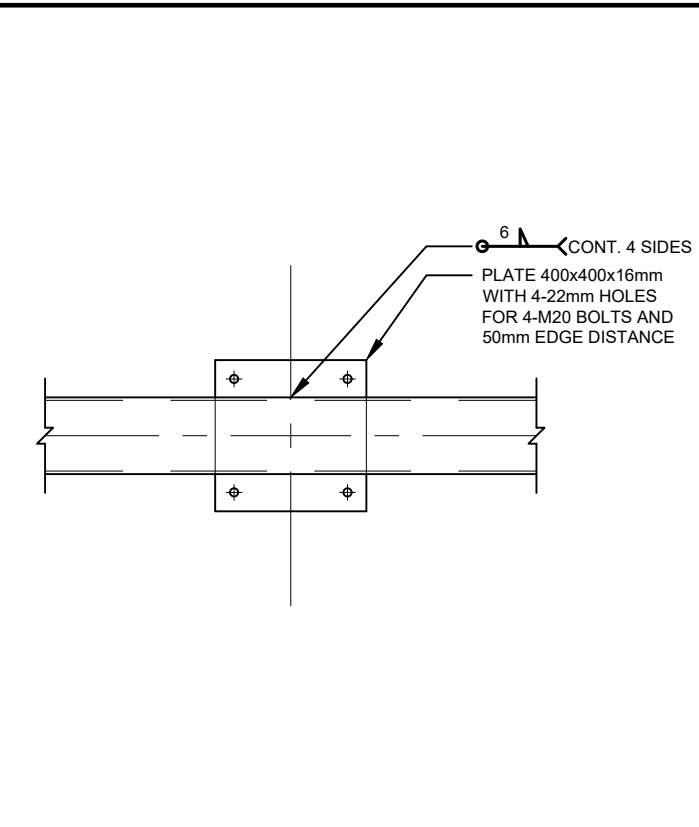
WELDING NOTES:
1. HSS WELD:
1.1. 9mm THICK WALL
1.2. 6mm FILLET WELD, CONTINUOUS ALL SIDES
1.3. 7018 WELDING ROD



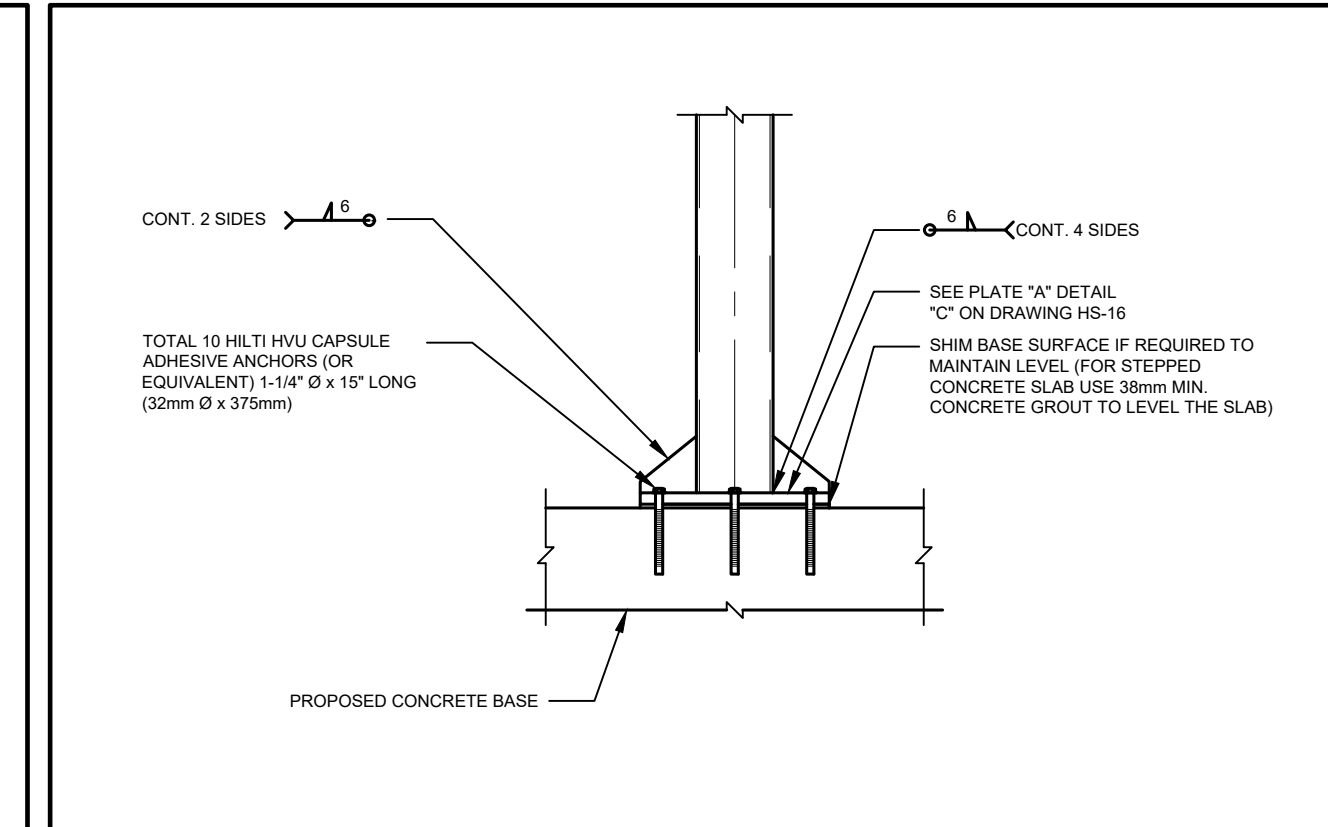
DETAIL 22: TOWER FRAME TO HSS SUPPORT CONNECTION DETAIL
SCALE: 1:20



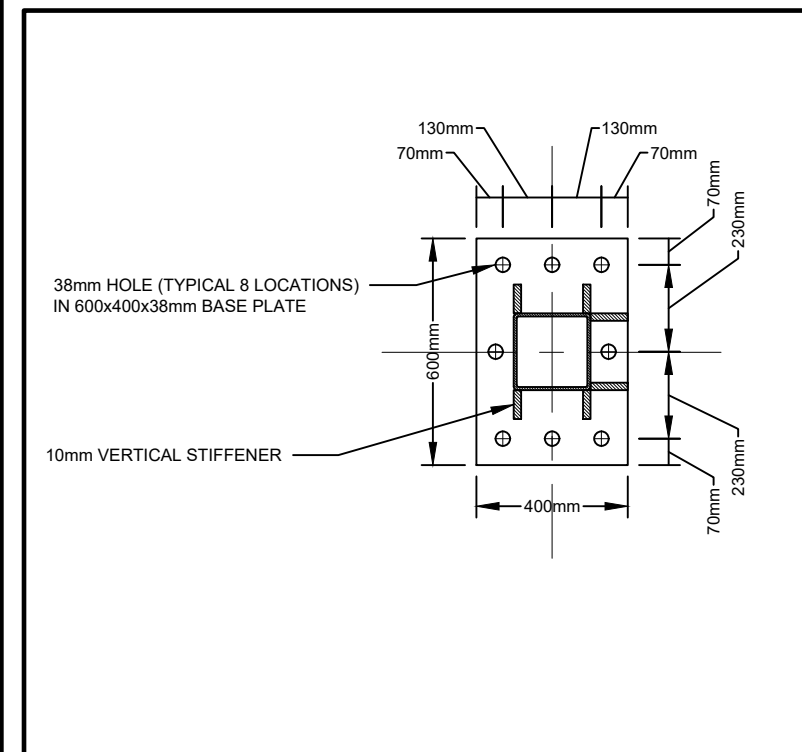
DETAIL A: PLATE CONNECTION
SCALE: 1:20



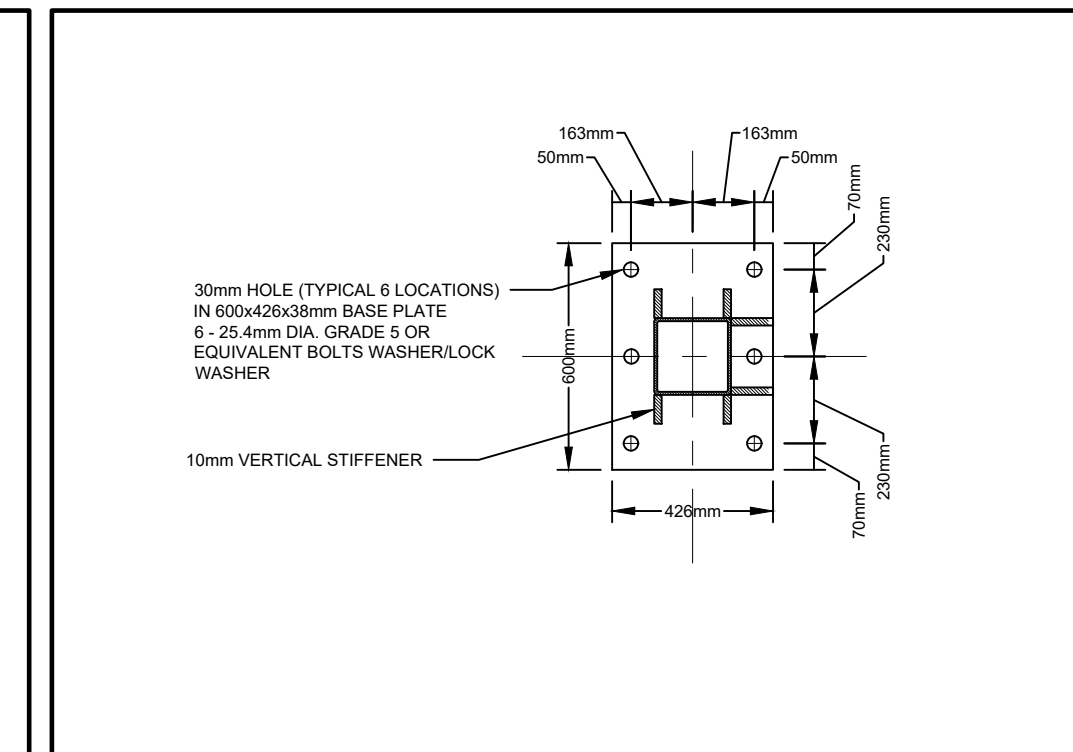
DETAIL B: PLATE CONNECTION
SCALE: 1:20



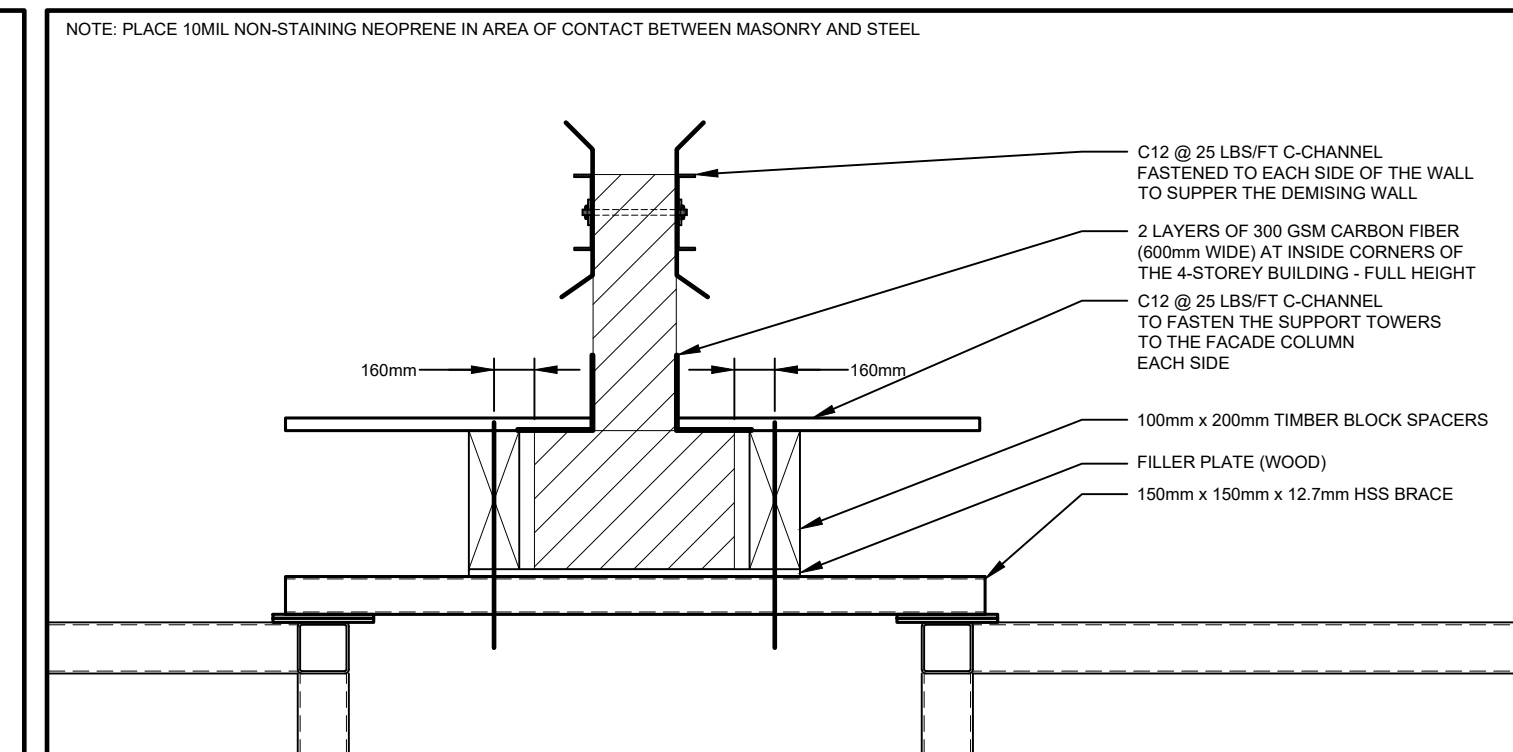
DETAIL 23: BASE PLATE TO CONCRETE BASE CONNECTION DETAIL
SCALE: 1:20



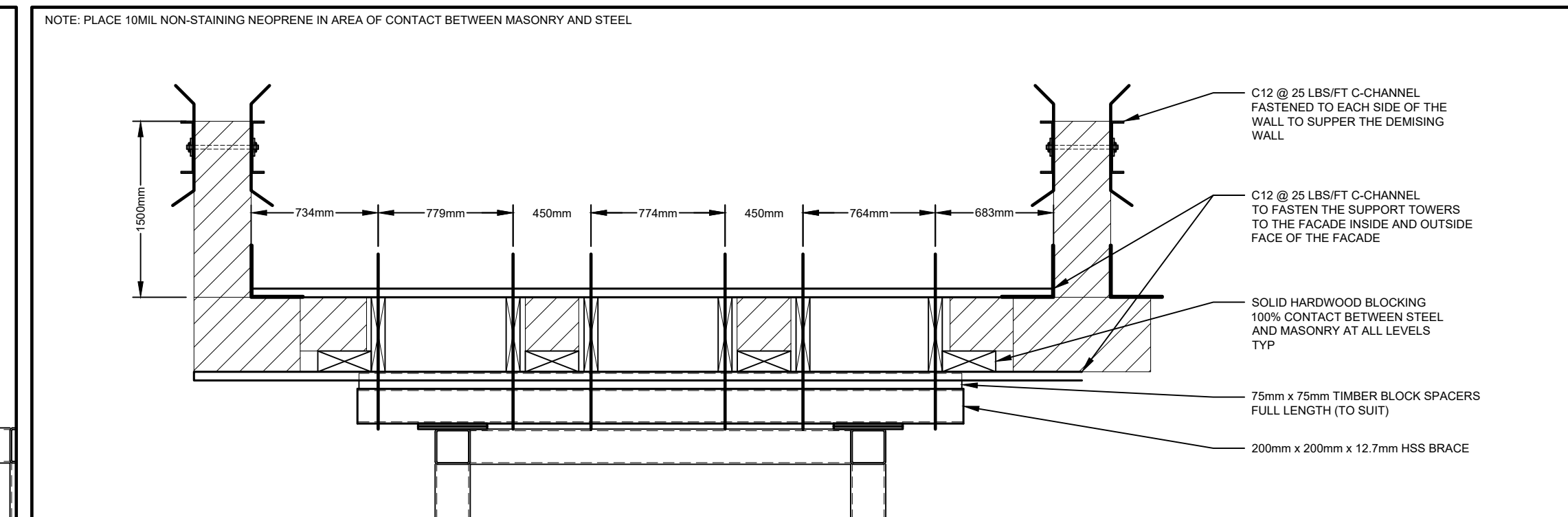
DETAIL C: PLATE 'A' BASE PLATE
SCALE: 1:20



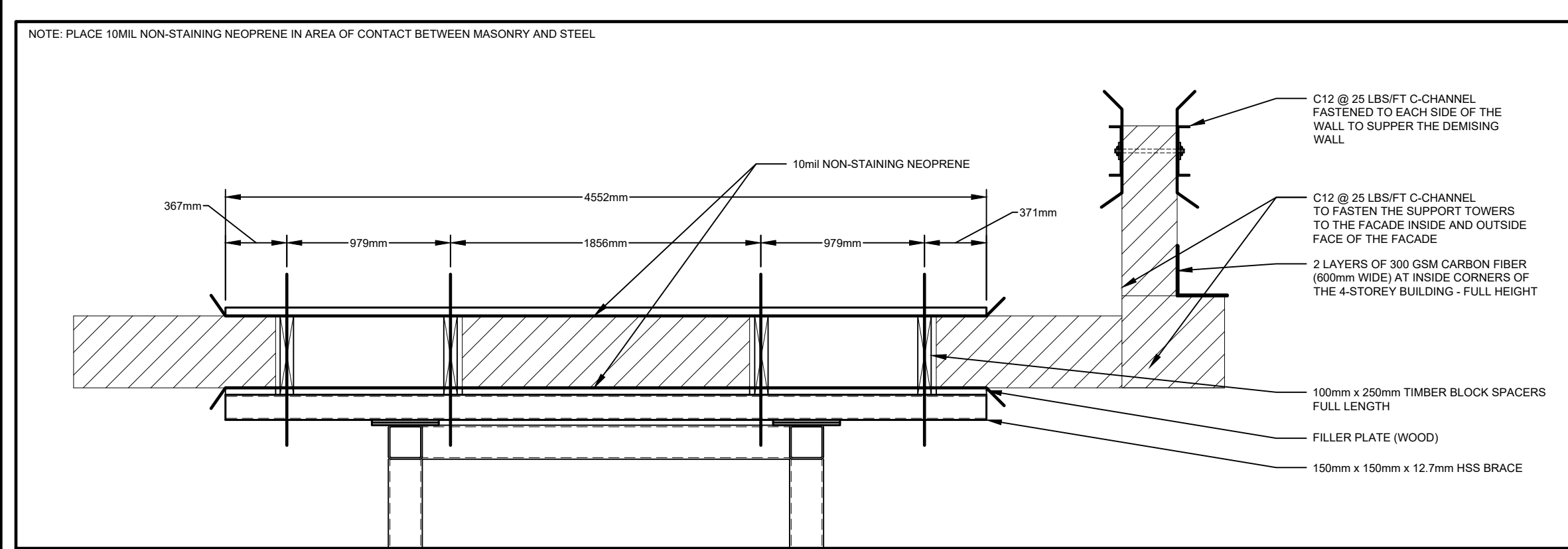
DETAIL 24: BASE PLATE AND CONNECTION DETAIL TO MAIN BEAMS
SCALE: 1:20



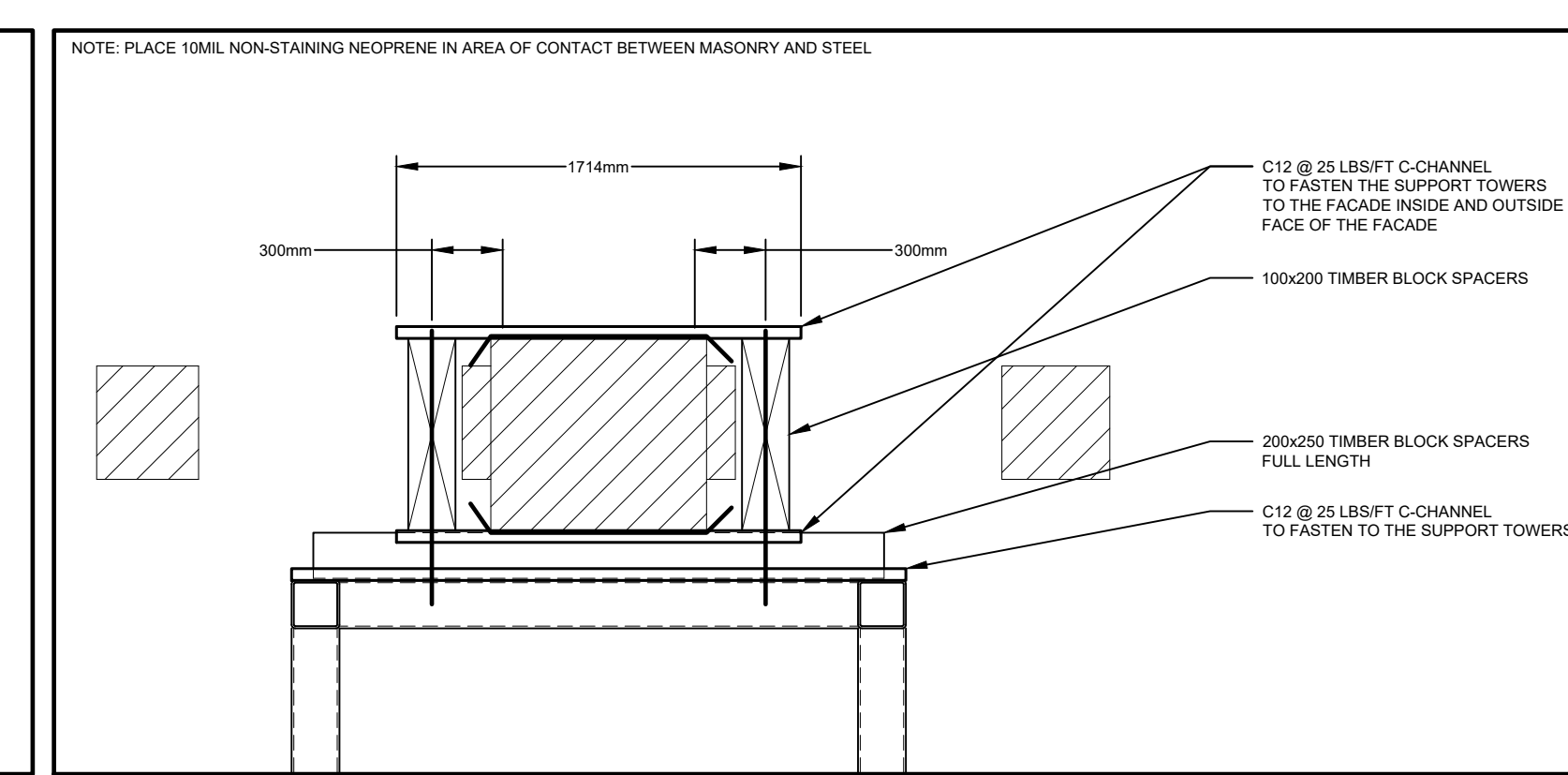
DETAIL 25: TOWER 1 CONNECTION 1 TO FACADE
SCALE: 1:30



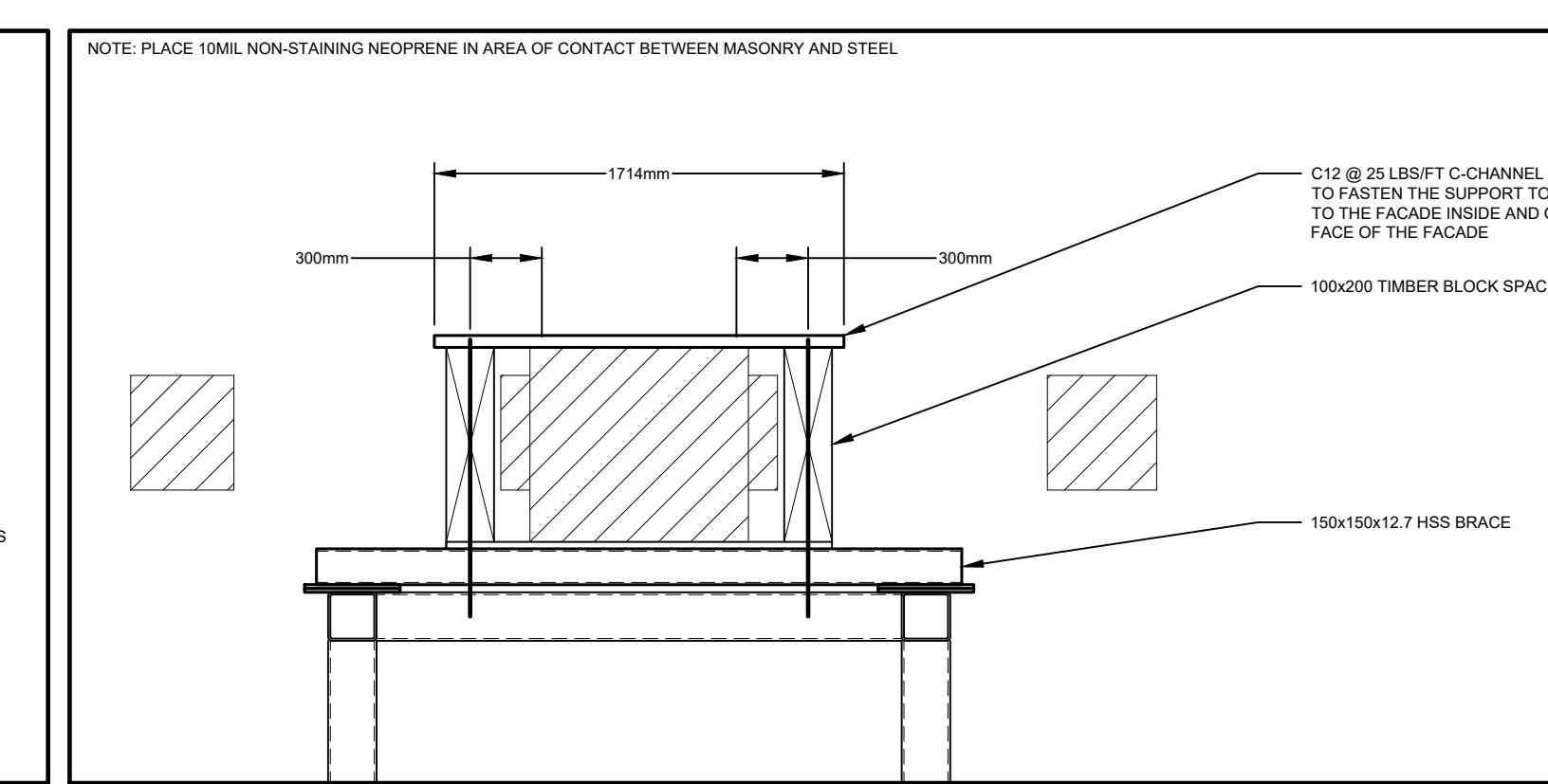
DETAIL 26: TOWER 1 CONNECTION 2 TO FACADE
SCALE: 1:30



DETAIL 27: TOWER 2 CONNECTION 1 TO FACADE
SCALE: 1:30



DETAIL 28: TOWER 3, 4, 5, 6, 7 AND 8 CONNECTION 1 TO FACADE
SCALE: 1:30



DETAIL 29: TOWER 3, 4, 5, 6, 7 AND 8 CONNECTION 2 TO FACADE
SCALE: 1:30

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ZONING	O.B.C.	PERMIT REVIEWED FOR COMPLIANCE WITH THE ONTARIO BUILDING CODE
19 148484 BLD 00	Krsmanovic, Gordana	15/May/2019

19 148484 BLD 00

PERMIT REVIEWED FOR COMPLIANCE WITH THE ONTARIO BUILDING CODE

19 148484 BLD 00

O.B.C. (S)

SEAL:

TORONTO Building

PERMIT REVIEWED FOR COMPLIANCE WITH THE ONTARIO BUILDING CODE

19 148484 BLD 00

O.B.C. (S)

SEAL:

PROFESSIONAL ENGINEER
D.W. SEBERRAS
41385014
04MAY2019
PROVINCE OF ONTARIO

CHECKED BY: **D.S.** FIRM NO: **30361**

DRAWN BY: **B.B.**

Construction North

PROJECT LOCATION:
YSL RESIDENCE
385 YONGE STREET
TORONTO, ON

PROJECT DESCRIPTION:
EXISTING HISTORICAL
FACADE RETENTION

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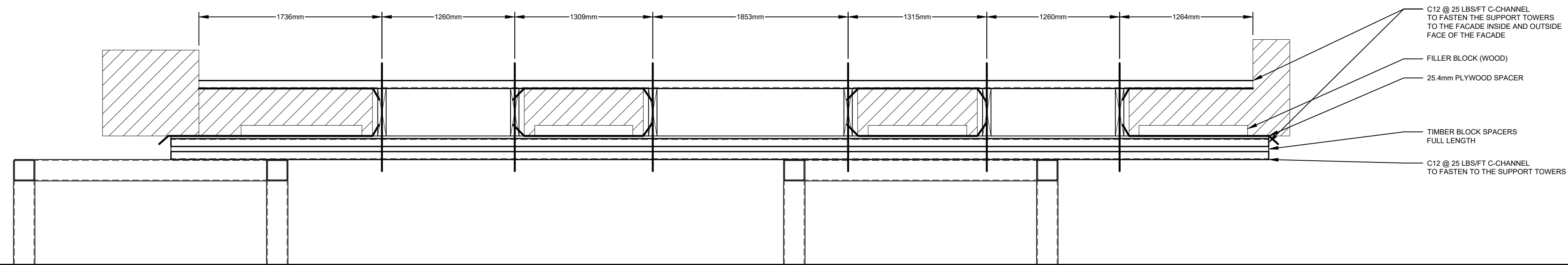
DRAWING TITLE:
TOWER FRAME PLAN
FACADE CONNECTION DETAILS

PROJECT NO:
201705

SCALE:
AS NOTED

DRAWING NO:
HS-16

NOTE: PLACE 10MIL NON-STAINING NEOPRENE IN AREA OF CONTACT BETWEEN MASONRY AND STEEL



DETAIL 30: TOWER 9 CONNECTION TO FACADE
SCALE: 1:30

CONCRETE NOTE:

MINIMUM CONCRETE STRENGTH: 40 MPa
FILTER CLOTH TO BE PLACED UNDER GRANULAR BASE (TYP)

WELDING NOTES:

- HSS WELD:
 - 9mm THICK WALL
 - 6mm FILLET WELD, CONTINUOUS ALL SIDES
 - 7019 WELDING ROD

DO NOT SCALE DRAWINGS

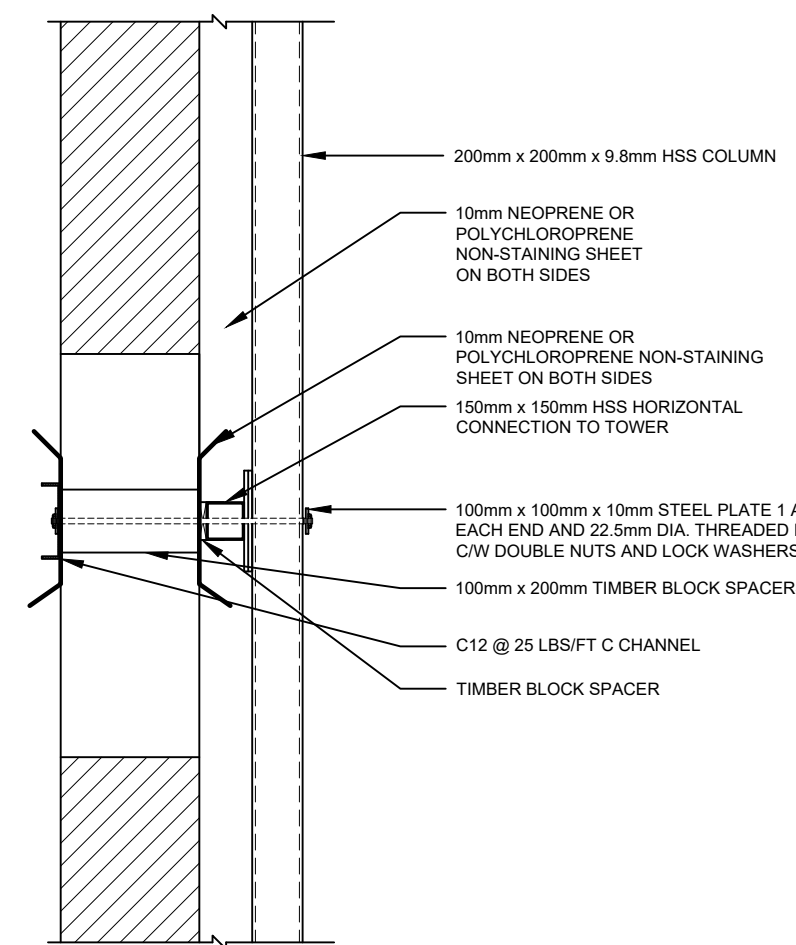
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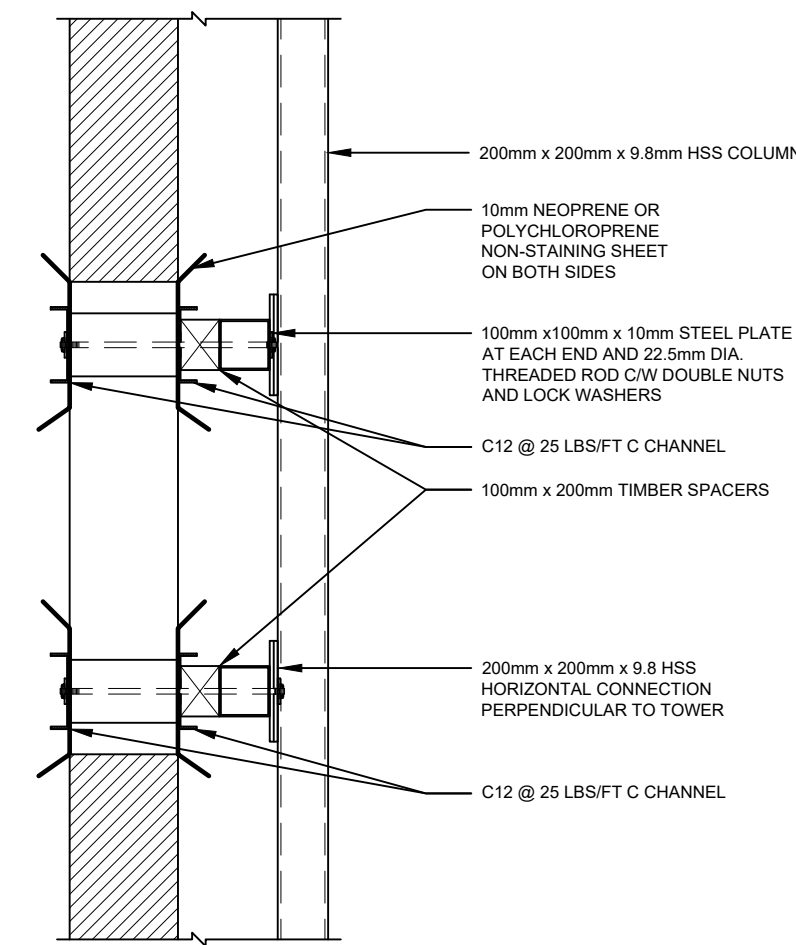
No.	Revision	Date
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6	RE-ISSUED FOR BUILDING PERMIT	04 MAR 2019

NOTE: PLACE 10MIL NON-STAINING NEOPRENE IN AREA OF CONTACT BETWEEN MASONRY AND STEEL



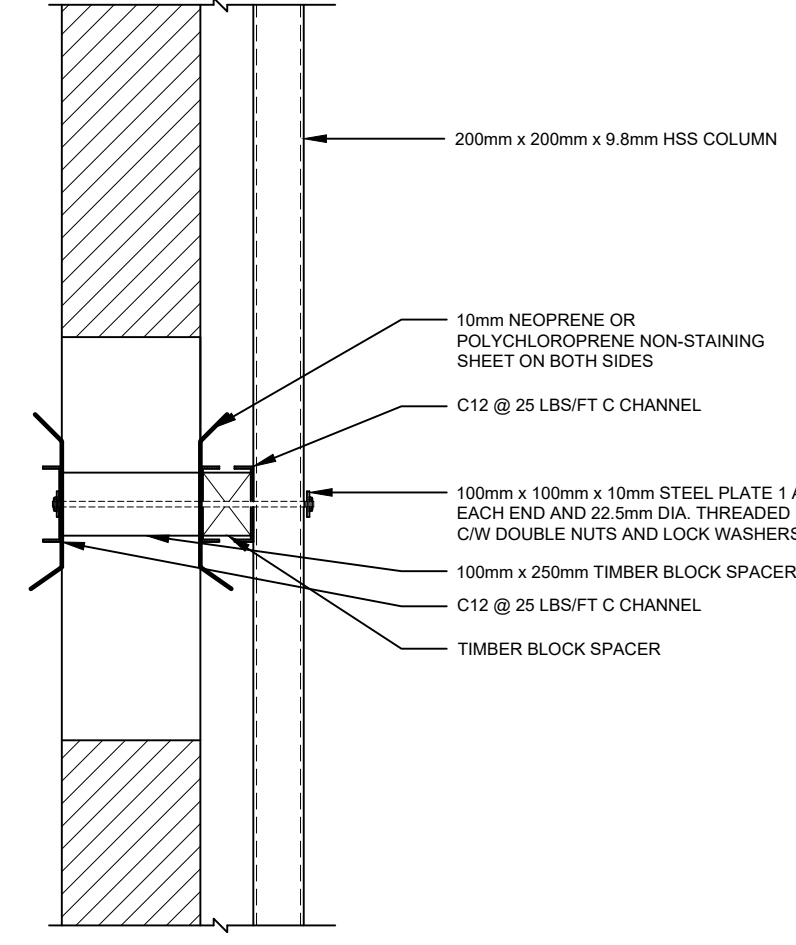
DETAIL 31: TOWER 1 AND 2 CONNECTION 1 TO FACADE CROSS SECTION
SCALE: 1:30

NOTE: PLACE 10MIL NON-STAINING NEOPRENE IN AREA OF CONTACT BETWEEN MASONRY AND STEEL



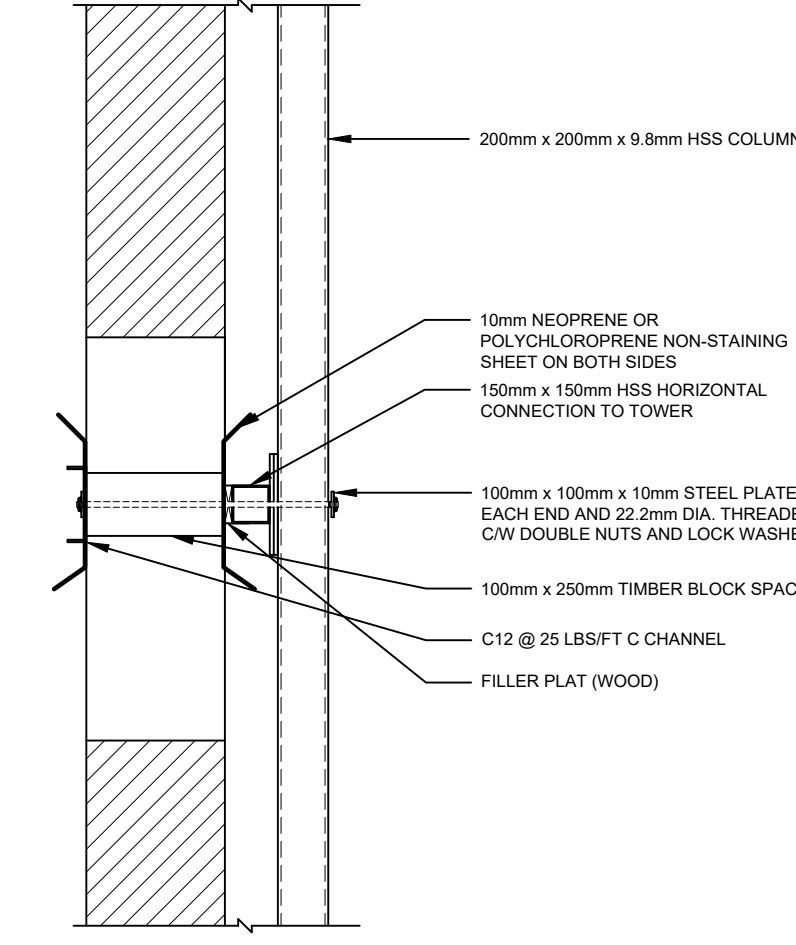
DETAIL 32: TOWER 1 CONNECTION 2 TO FACADE CROSS SECTION
SCALE: 1:30

NOTE: PLACE 10MIL NON-STAINING NEOPRENE IN AREA OF CONTACT BETWEEN MASONRY AND STEEL



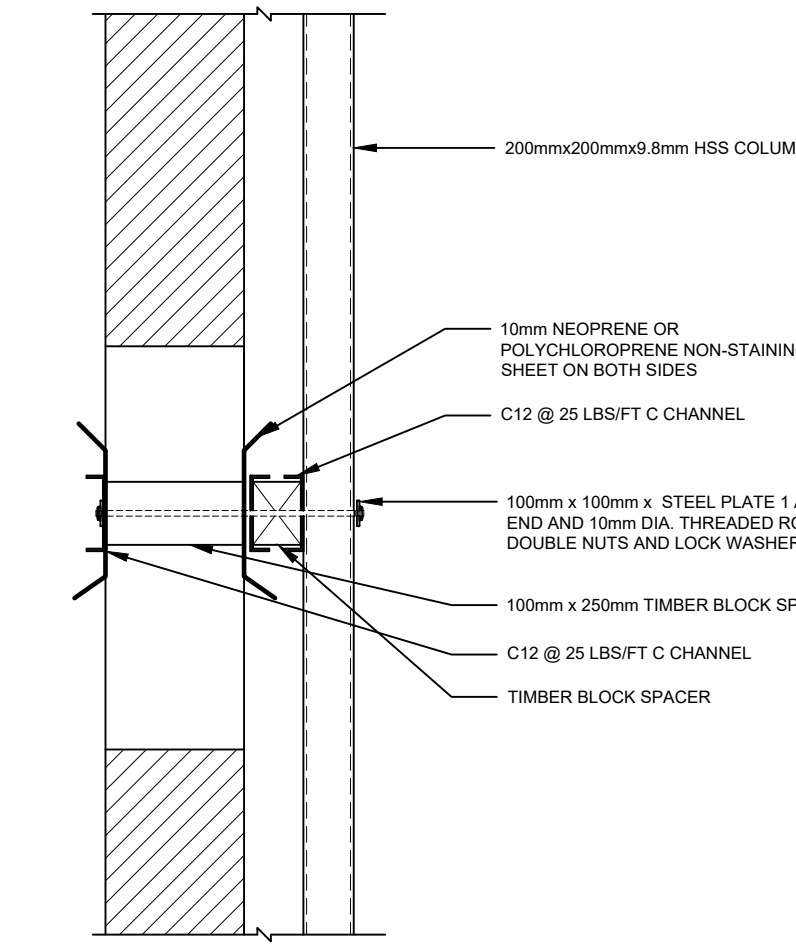
DETAIL 33: TOWER 3, 4, 5, 6, 7 AND 8 CONNECTION 1 TO FACADE CROSS SECTION
SCALE: 1:30

NOTE: PLACE 10MIL NON-STAINING NEOPRENE IN AREA OF CONTACT BETWEEN MASONRY AND STEEL



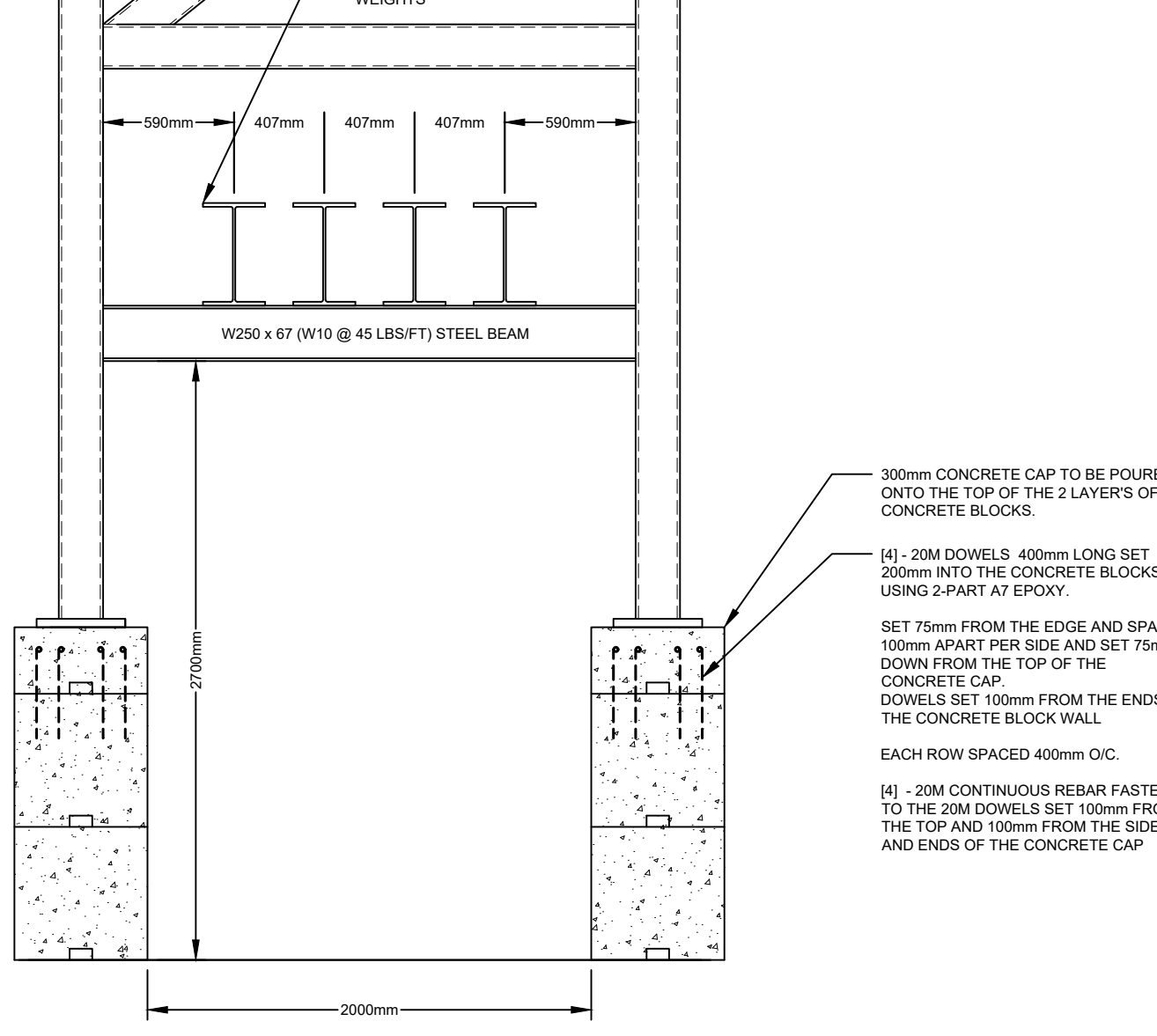
DETAIL 34: TOWER 3, 4, 5, 6, 7 AND 8 CONNECTION 2 TO FACADE CROSS SECTION
SCALE: 1:30

NOTE: PLACE 10MIL NON-STAINING NEOPRENE IN AREA OF CONTACT BETWEEN MASONRY AND STEEL



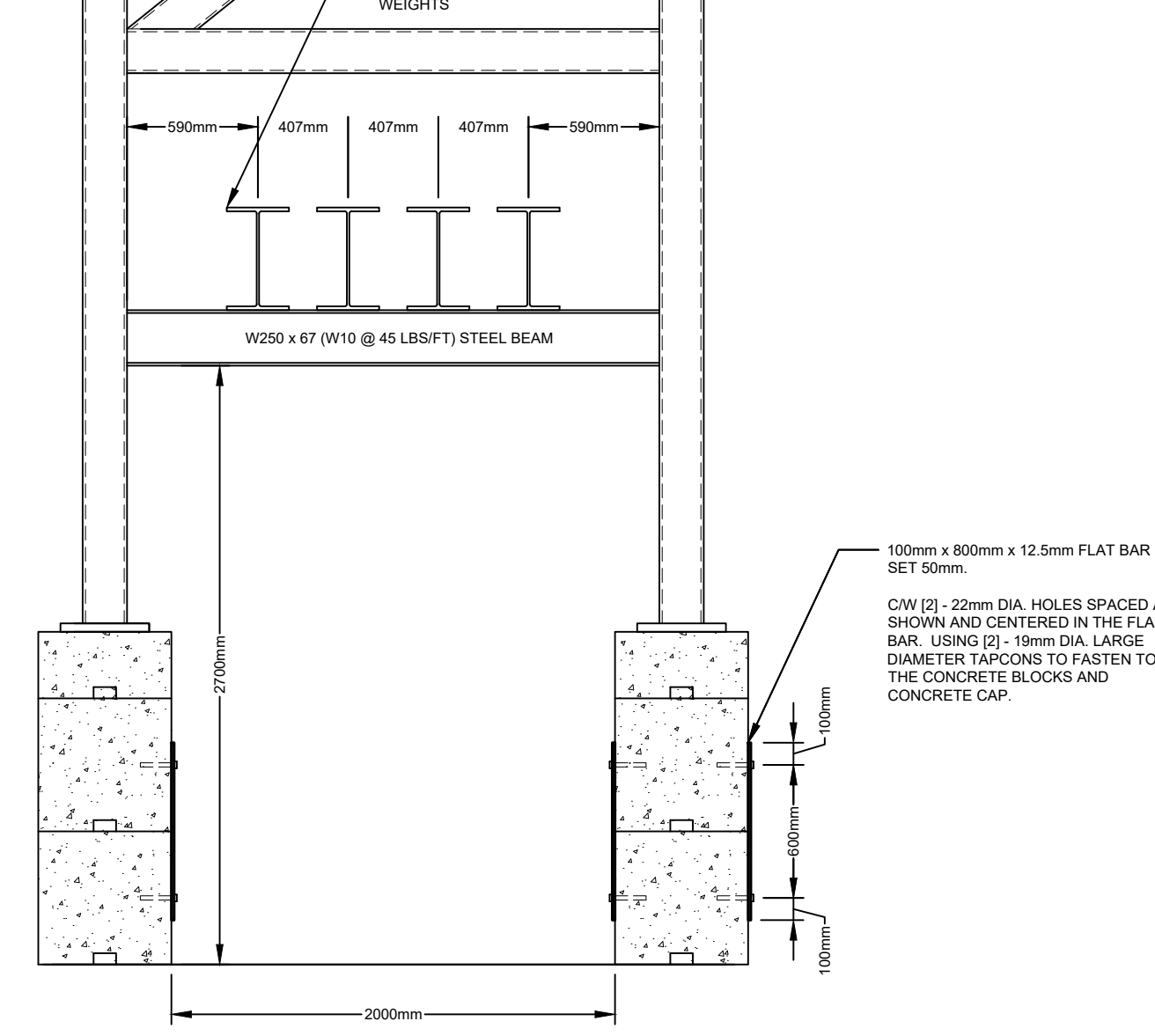
DETAIL 35: TOWER 9 CONNECTION TO FACADE CROSS SECTION
SCALE: 1:30

NOTE: PLACE 10MIL NON-STAINING NEOPRENE IN AREA OF CONTACT BETWEEN MASONRY AND STEEL



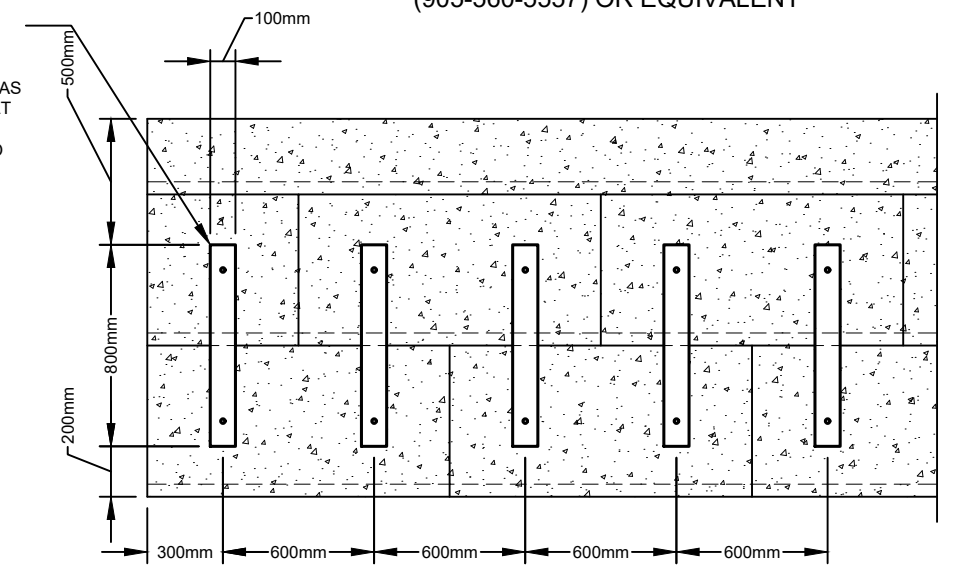
DETAIL 36: CONCRETE CAP TO CONCRETE BLOCK FASTENING DETAIL
SCALE: 1:30

NOTE: PLACE 10MIL NON-STAINING NEOPRENE IN AREA OF CONTACT BETWEEN MASONRY AND STEEL



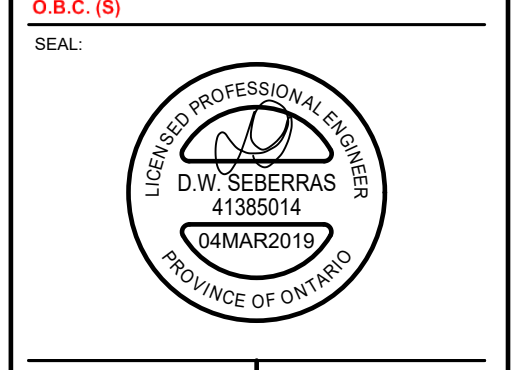
DETAIL 37: STRAPPING CONNECTION AND PLACEMENT DETAIL
SCALE: 1:30

NOTE: PRECAST CONCRETE RETAINING WALL BLOCKS (600MM X 600MM X 1200MM) AS SUPPLIED BY STONEY CREEK REDIMIX (905-560-5557) OR EQUIVALENT



19 148484 BLD 00

ZONING	O.B.C.	Krsnanovic, Gordana	15/May/2019
FIRE SERVICES	O.B.C. (S)		



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D.S.	30361
DRAWN BY:	
B.B.	

Construction North

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TORONTO, ON

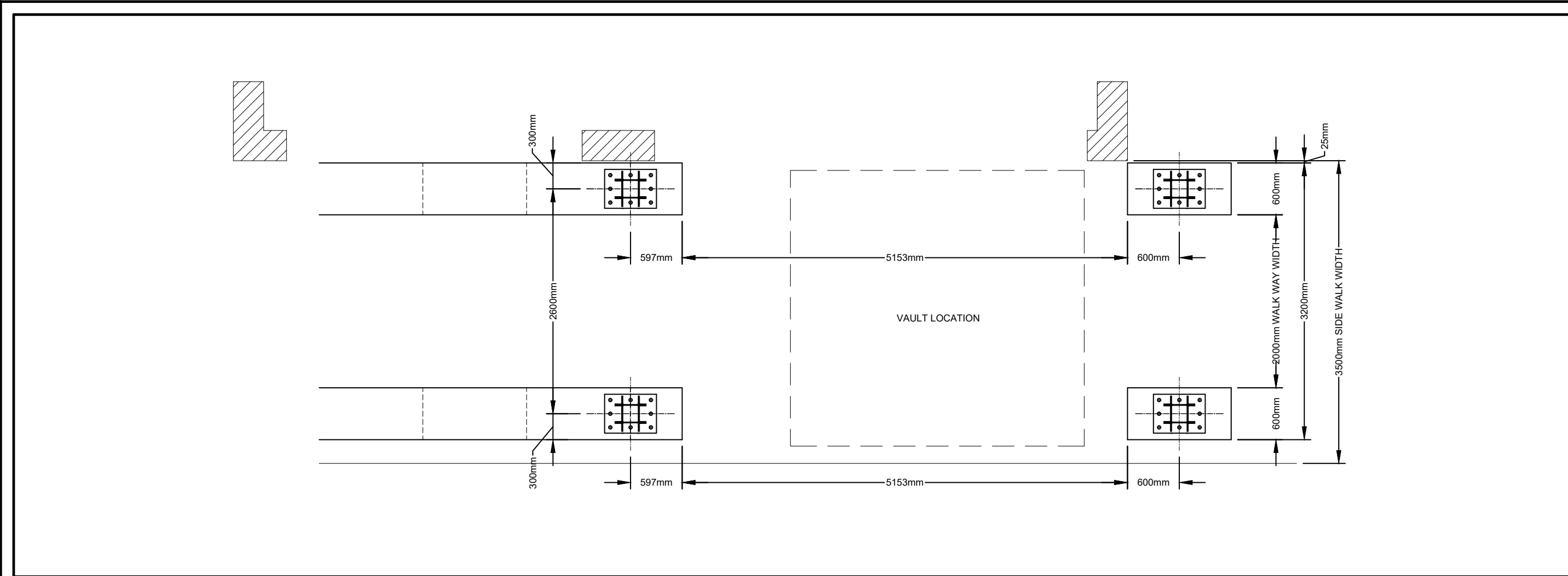
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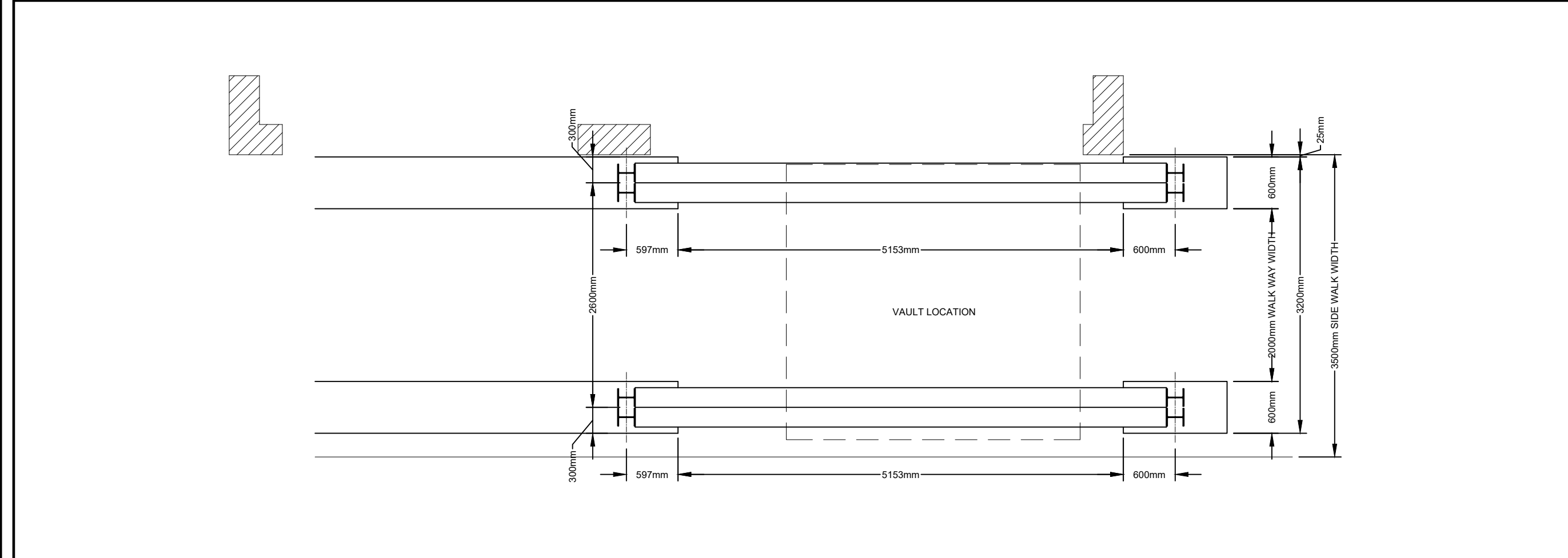
DRAWING TITLE:
FACADE CONNECTION DETAILS
CONCRETE BLOCK WALL DETAILS

PROJECT NO: 201705	DRAWING NO: HS-17
SCALE: AS NOTED	



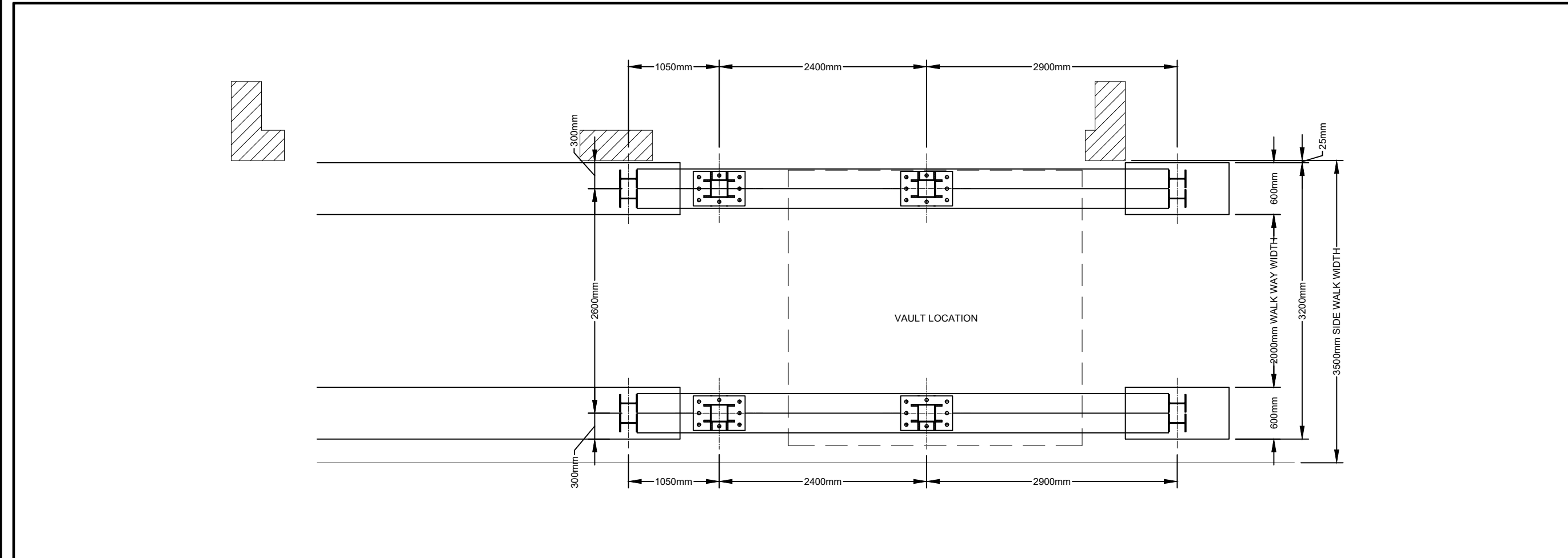
DETAIL 46: YONGE ST. VAULT FACADE TOWER SUPPORT FRAME - BASE PLATE LOCATIONS

SCALE: 1:50



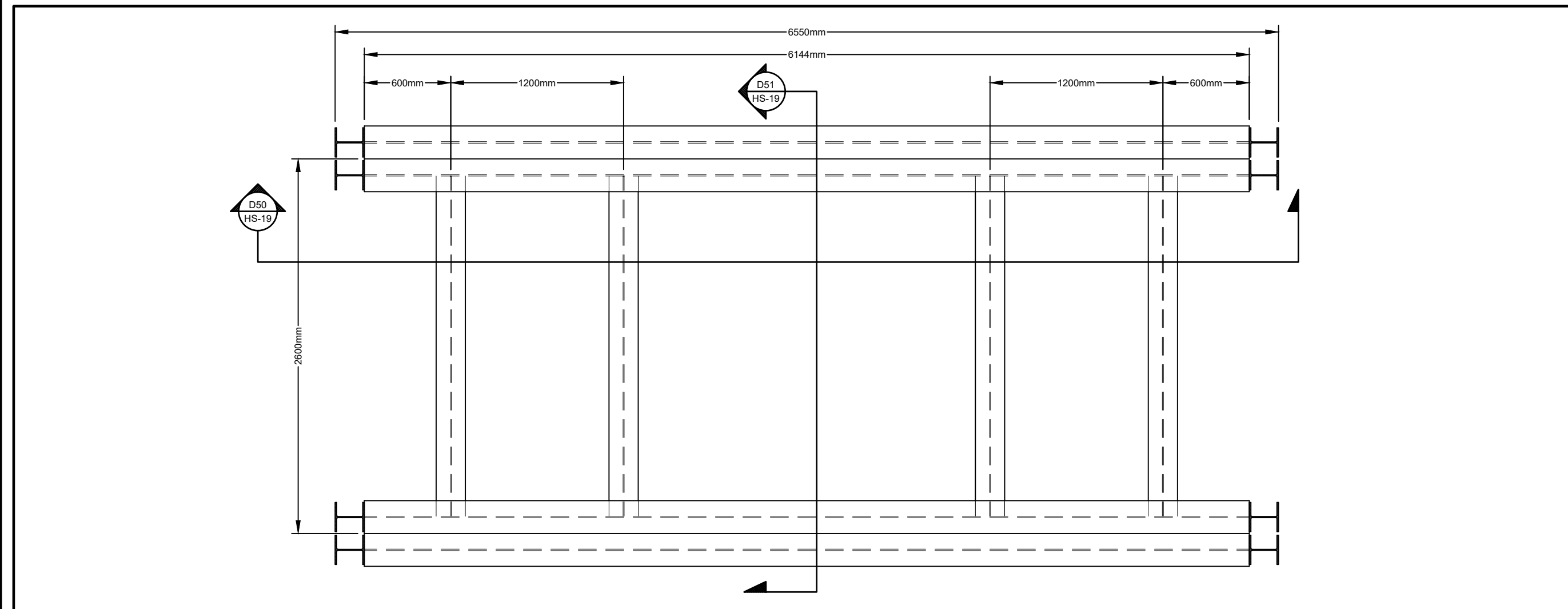
DETAIL 47: YONGE ST. VAULT FACADE TOWER SUPPORT FRAME - MAIN BEAM LOCATIONS

SCALE: 1:50



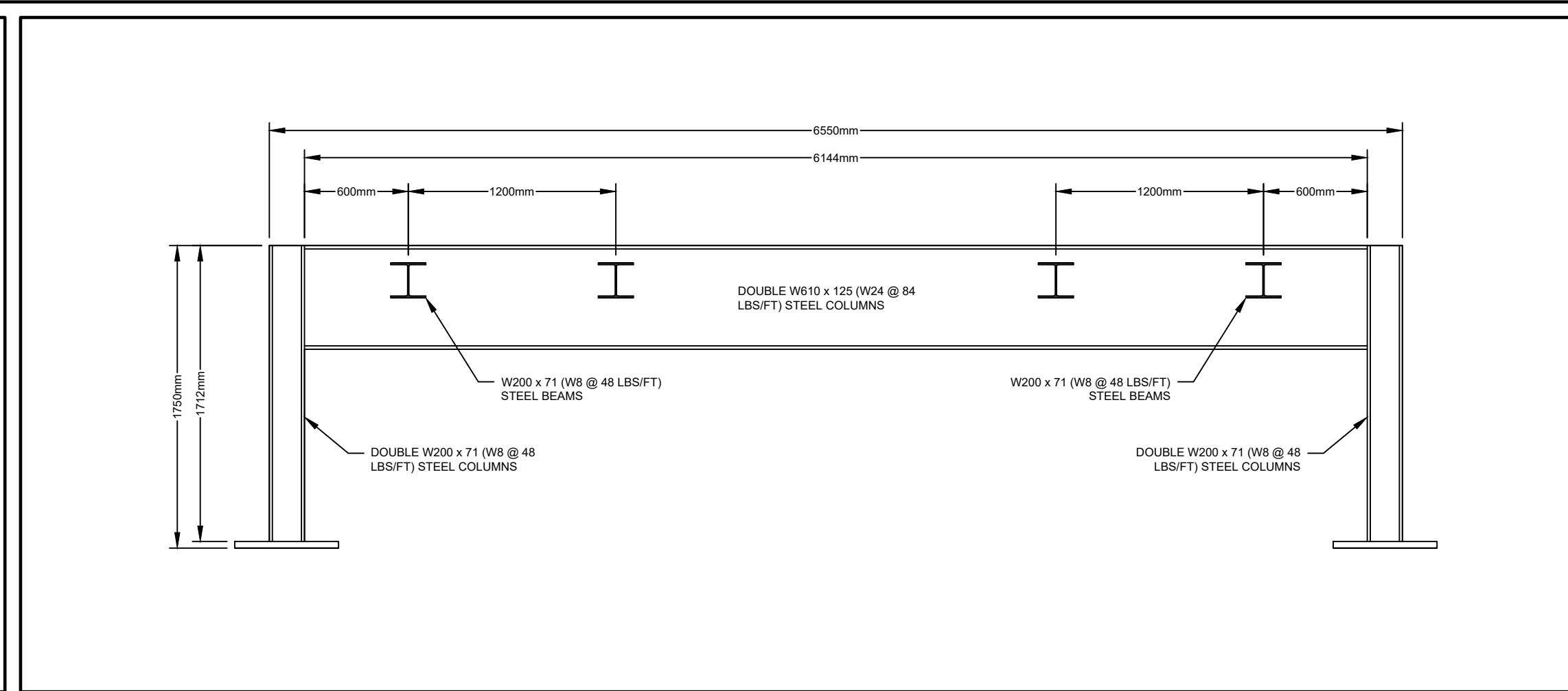
DETAIL 48: YONGE ST. VAULT FACADE TOWER - BASE PLATE LOCATIONS

SCALE: 1:50



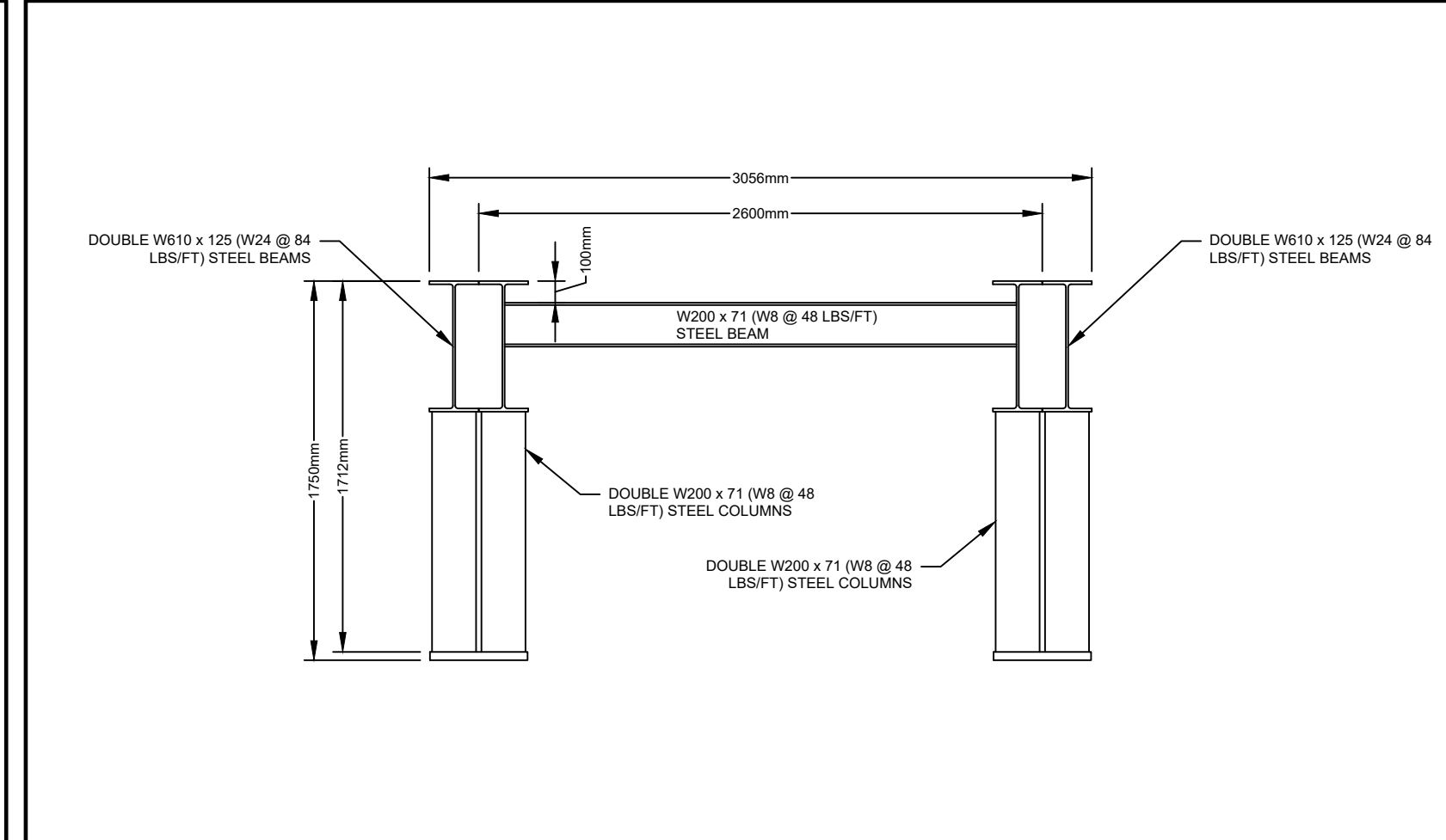
DETAIL 49: YONGE ST. VAULT FACADE TOWER - STEEL FRAME PLAN

SCALE: 1:30



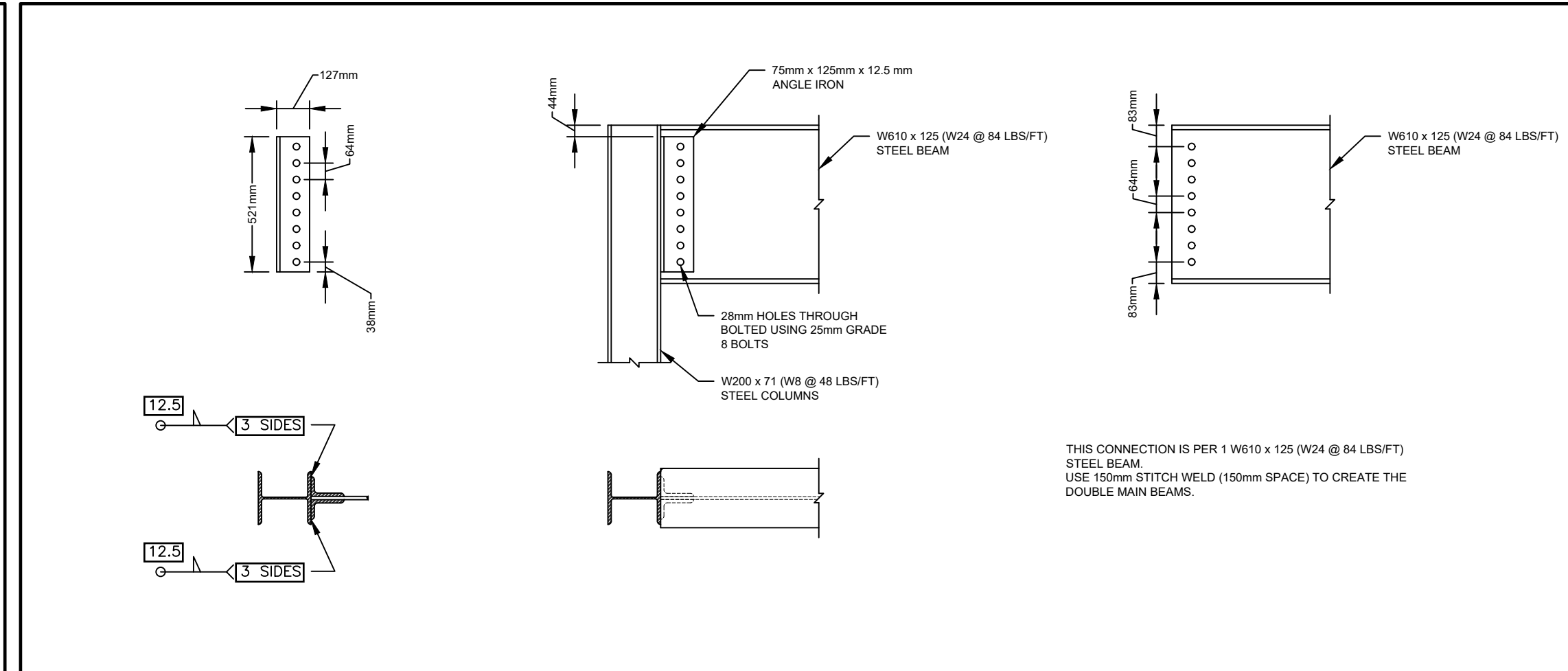
DETAIL 50: YONGE ST. VAULT FACADE TOWER - STEEL FRAME PLAN CROSS SECTION 1

SCALE: 1:30



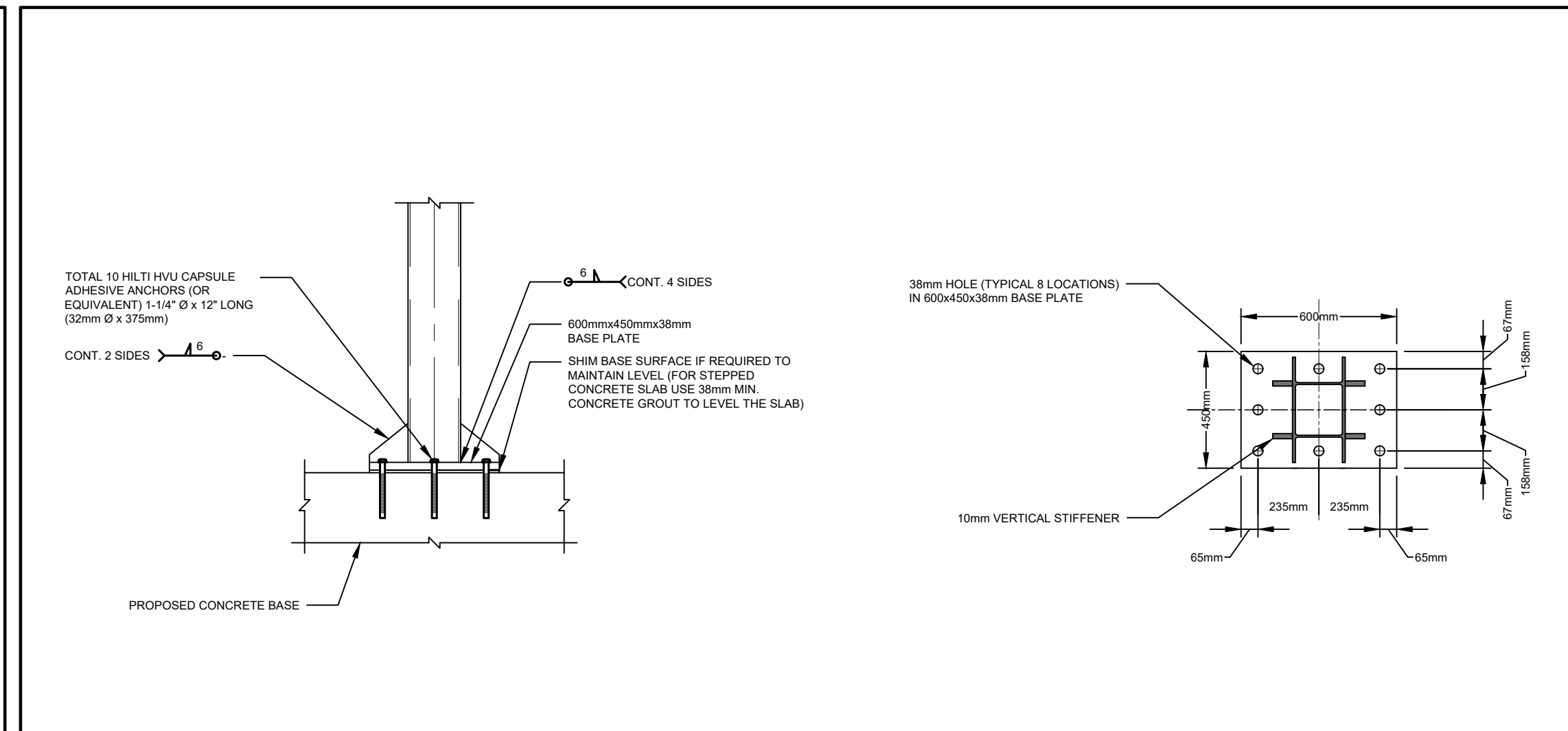
DETAIL 51: YONGE ST. VAULT FACADE TOWER - STEEL FRAME PLAN CROSS SECTION 2

SCALE: 1:30



DETAIL 52: YONGE ST. VAULT FACADE TOWER - STEEL FRAME CONNECTION DETAILS

SCALE: 1:20



DETAIL 53: YONGE ST. VAULT FACADE TOWER - STEEL FRAME BASE PLATE TO CONCRETE WALL CONNECTION

SCALE: 1:20

CONCRETE NOTE:

MINIMUM CONCRETE STRENGTH: 40 MPa
FILTER CLOTH TO BE PLACED UNDER GRANULAR BASE (TYP)

WELDING NOTES:

1. HSS WELD:
- 1.1. 9mm THICK WALL
- 1.2. 6mm FILLET WELD, CONTINUOUS ALL SIDES
- 1.3. 7018 WELDING ROD

DO NOT SCALE DRAWINGS.

THE CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS AND OMISSIONS TO THE CONSULTANT BEFORE PROCEEDING WITH THE WORK. THIS DRAWING SHALL NOT BE REPRODUCED IN ANY MANNER, IN PART OR IN WHOLE, FOR ANY PROJECT OTHER THAN THAT FOR WHICH IT WAS PREPARED. THIS DRAWING AND ALL DESIGN CONCEPTS THEREON, ARE AN INSTRUMENT OF PROFESSIONAL SERVICE AND REMAIN THE PROPERTY OF FACET GROUP INC.

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SECTION/DETAIL NUMBER
DWG No. WHERE DETAILED

No.	Revision	Date
1	ISSUED FOR GENERAL REVIEW	30 MAY 2017
2	UPDATED AS PER COMMENTS	02 JUNE 2017
3	ISSUED FOR CP	04 OCT 2017
4	ISSUED FOR BUILDING PERMIT	29 SEP 2018
5	ISSUED FOR TENDER	29 JAN 2019
6	RE-ISSUED FOR BUILDING PERMIT	04 MAR 2019



PERMIT REVIEWED FOR COMPLIANCE WITH THE ONTARIO BUILDING CODE

19 148484 BLD 00

O.B.C. Krstanovic, Gordana 15/May/2019

FIRE SERVICES

O.B.C. (S)

SEAL



CHECKED BY: D.S. FIRM NO: 30361

DRAWN BY: B.B.



PROJECT LOCATION:
YSL RESIDENCE
385 YONGE STREET
TORONTO, ON

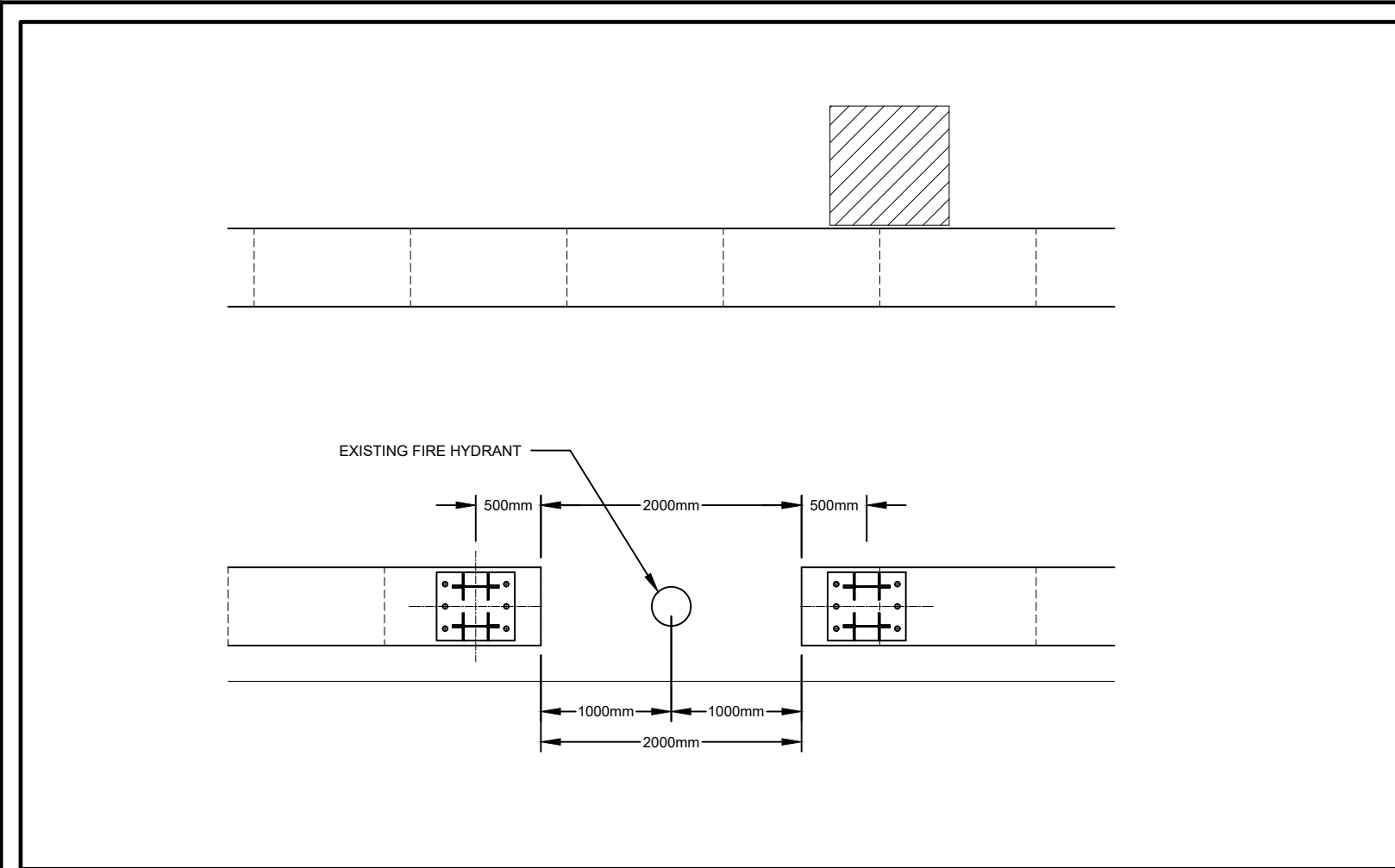
PROJECT DESCRIPTION:
EXISTING HISTORICAL
FACADE RETENTION

Facet Group Inc.
Heritage Building Consultants,
Engineering and Project Management
716 - 228 Queens Quay West
Toronto, Ontario M5J 2X1
Tel: 416-409-0772 | Fax: 416-349-2453
www.facetgroup.ca | neil@facetgroup.ca
David Seberas P. Eng.
SEBERAS PROFESSIONAL SERVICES LTD

ENTUITIVE
Entuitive Corporation
200 University Avenue, 7th Floor
Toronto, ON M5A 3C9 Canada
entuitive.com

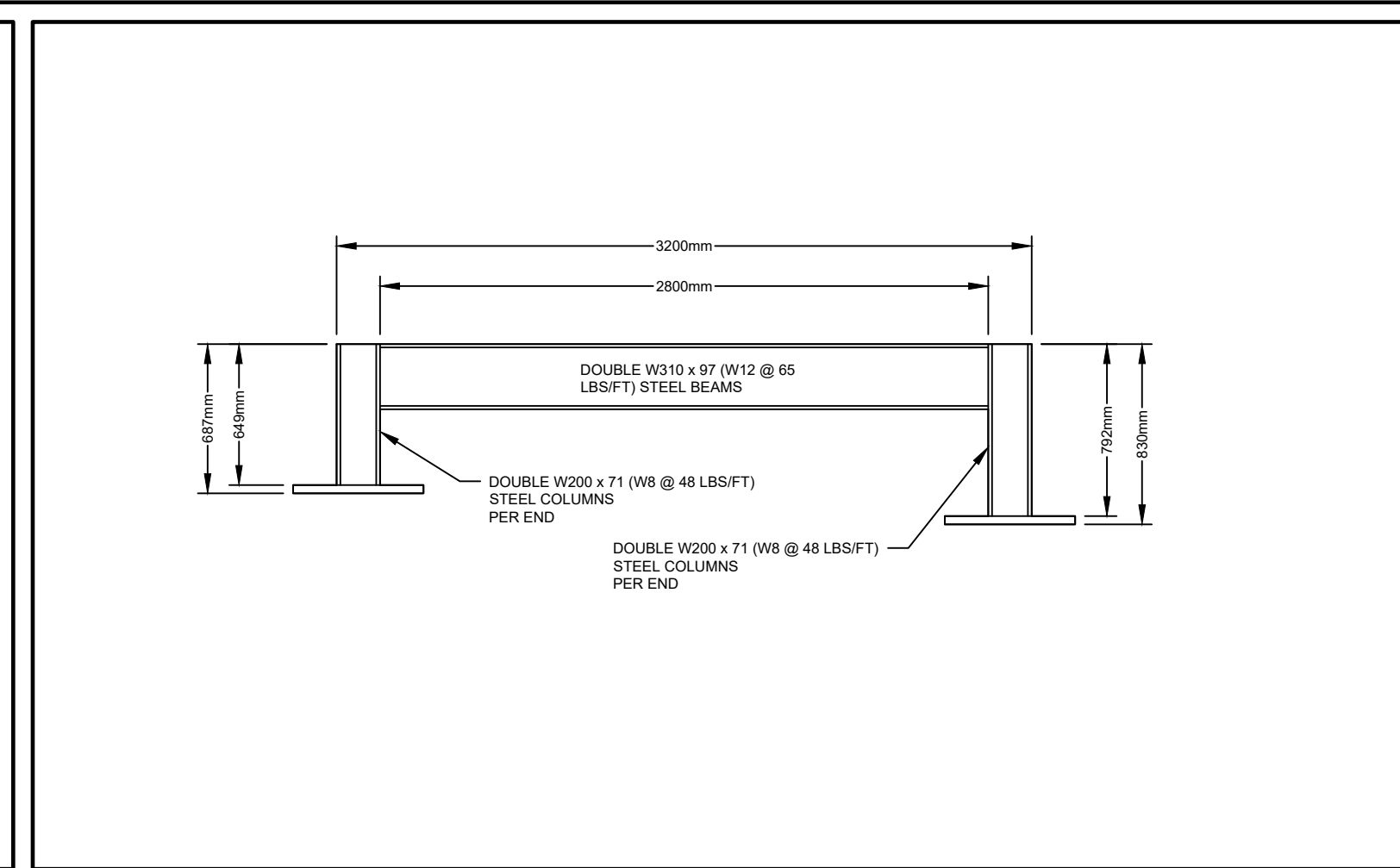
DRAWING TITLE:
VAULT SUPPORT FRAME DETAILS
AND STEEL CONNECTION DETAILS
YONGE STREET

PROJECT NO: 201705
SCALE: AS NOTED
DRAWING NO: HS-19



DETAIL 54: YONGE ST. TOWER 6 LEG SUPPORT FRAME - BASE PLATE LOCATIONS

SCALE: 1:50

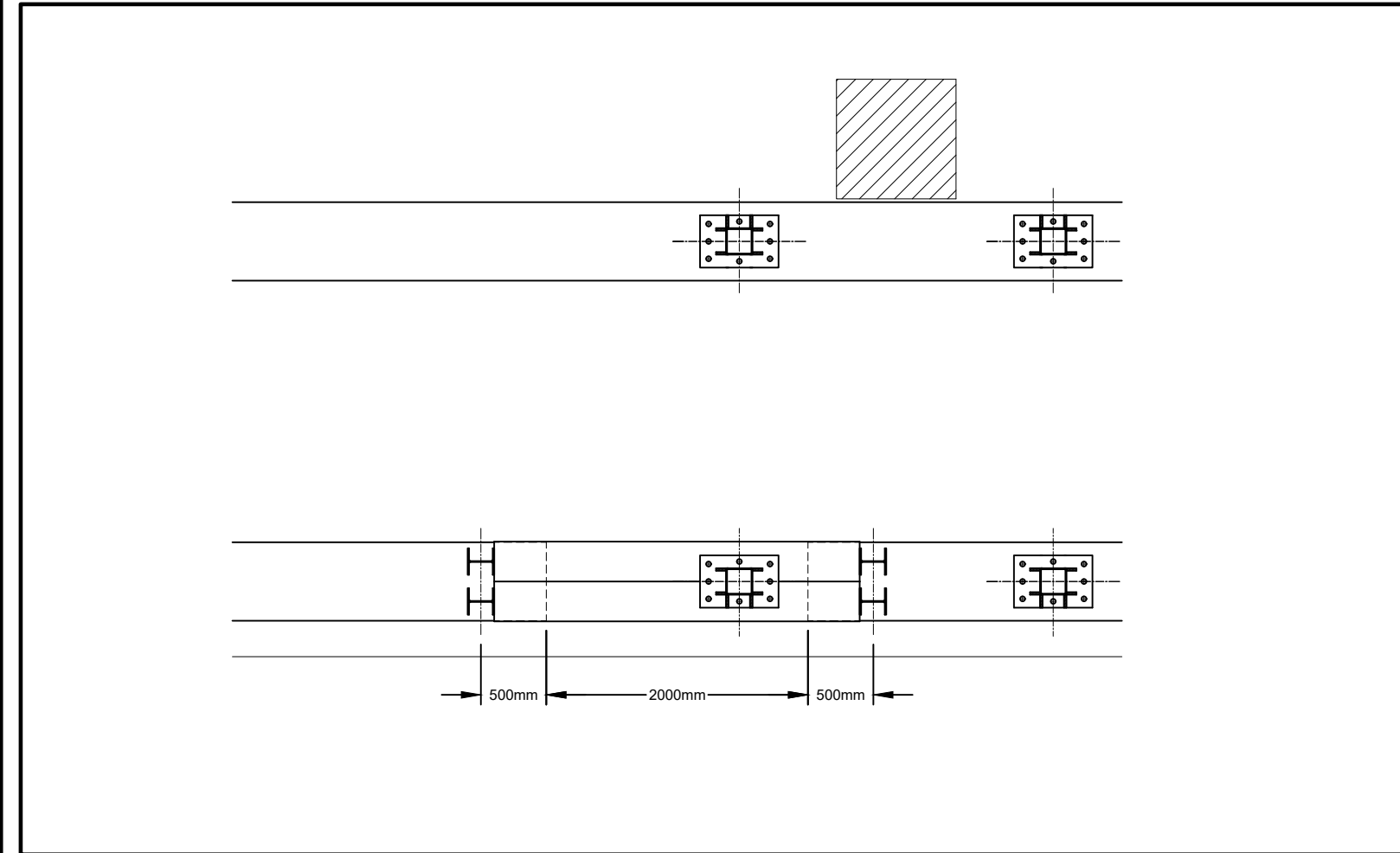


DETAIL 58: YONGE ST. TOWER 6 LEG SUPPORT - STEEL FRAME PLAN CROSS SECTION

SCALE: 1:30

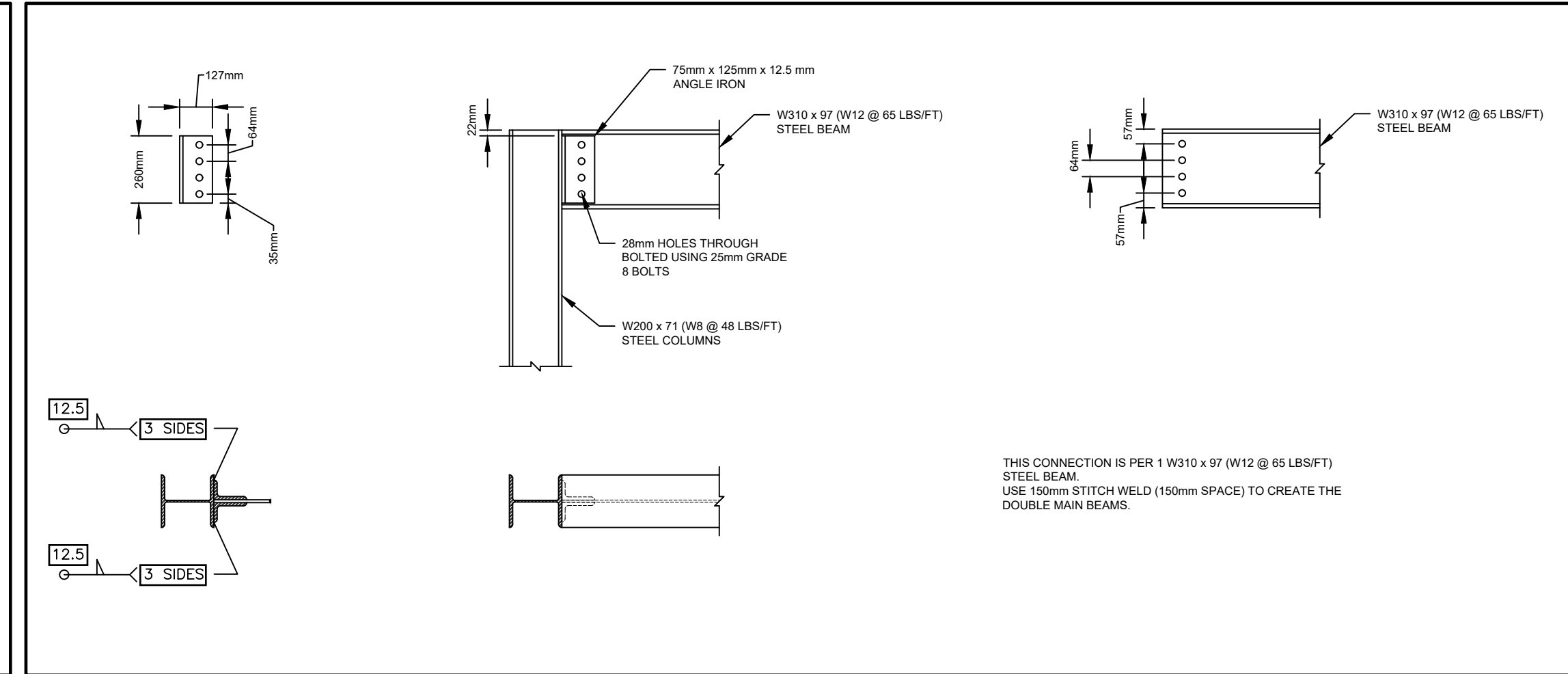
CONCRETE NOTE:
 MINIMUM CONCRETE STRENGTH: 40 MPa
 FILTER CLOTH TO BE PLACED UNDER GRANULAR BASE (TYP)

WELDING NOTES:
 1. HSS WELD:
 1.1. 9mm THICK WALL
 1.2. 6mm FILLET WELD, CONTINUOUS ALL SIDES
 1.3. 7018 WELDING ROD



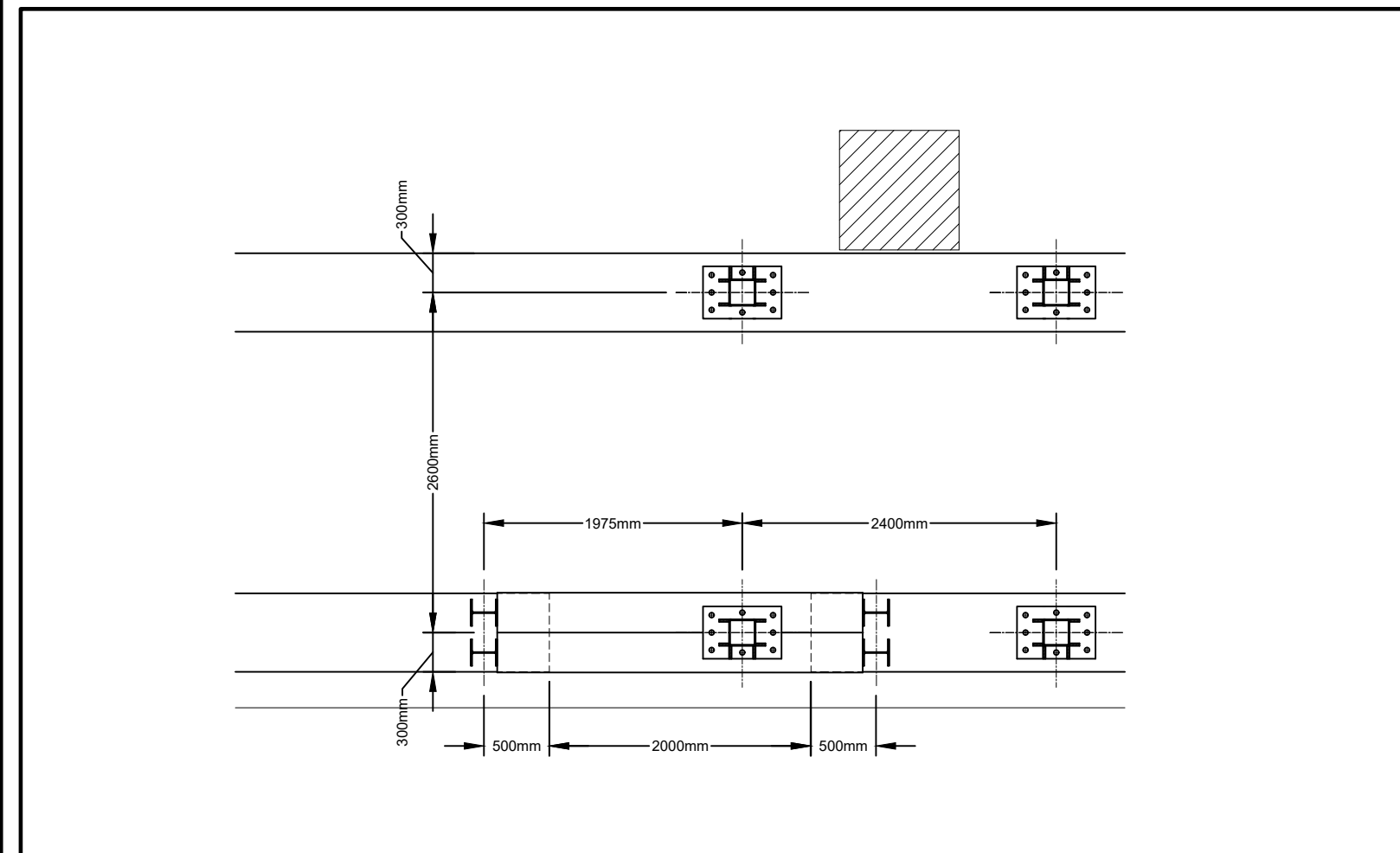
DETAIL 55: YONGE ST. TOWER 6 LEG SUPPORT FRAME - MAIN BEAM LOCATIONS

SCALE: 1:50



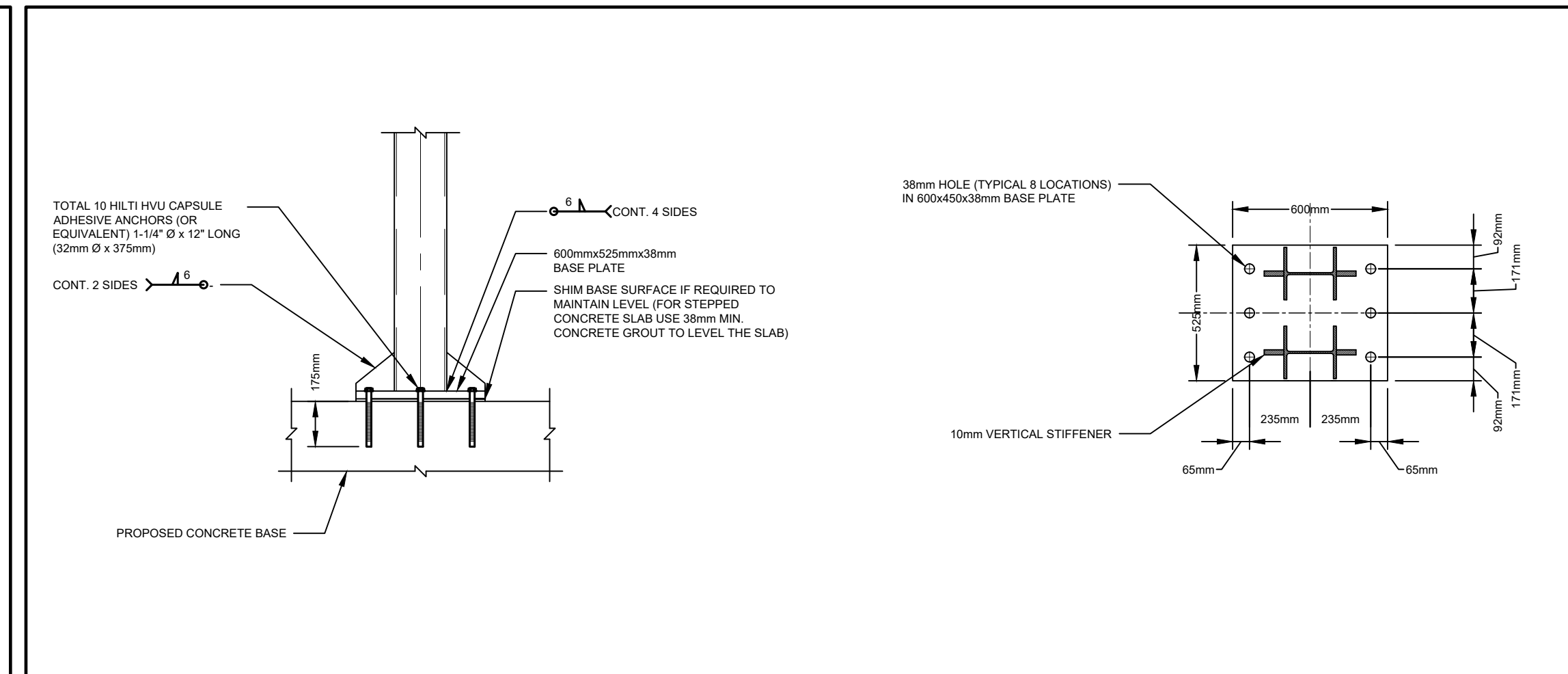
DETAIL 59: YONGE ST. TOWER 6 LEG SUPPORT - STEEL FRAME CONNECTION DETAILS

SCALE: 1:20



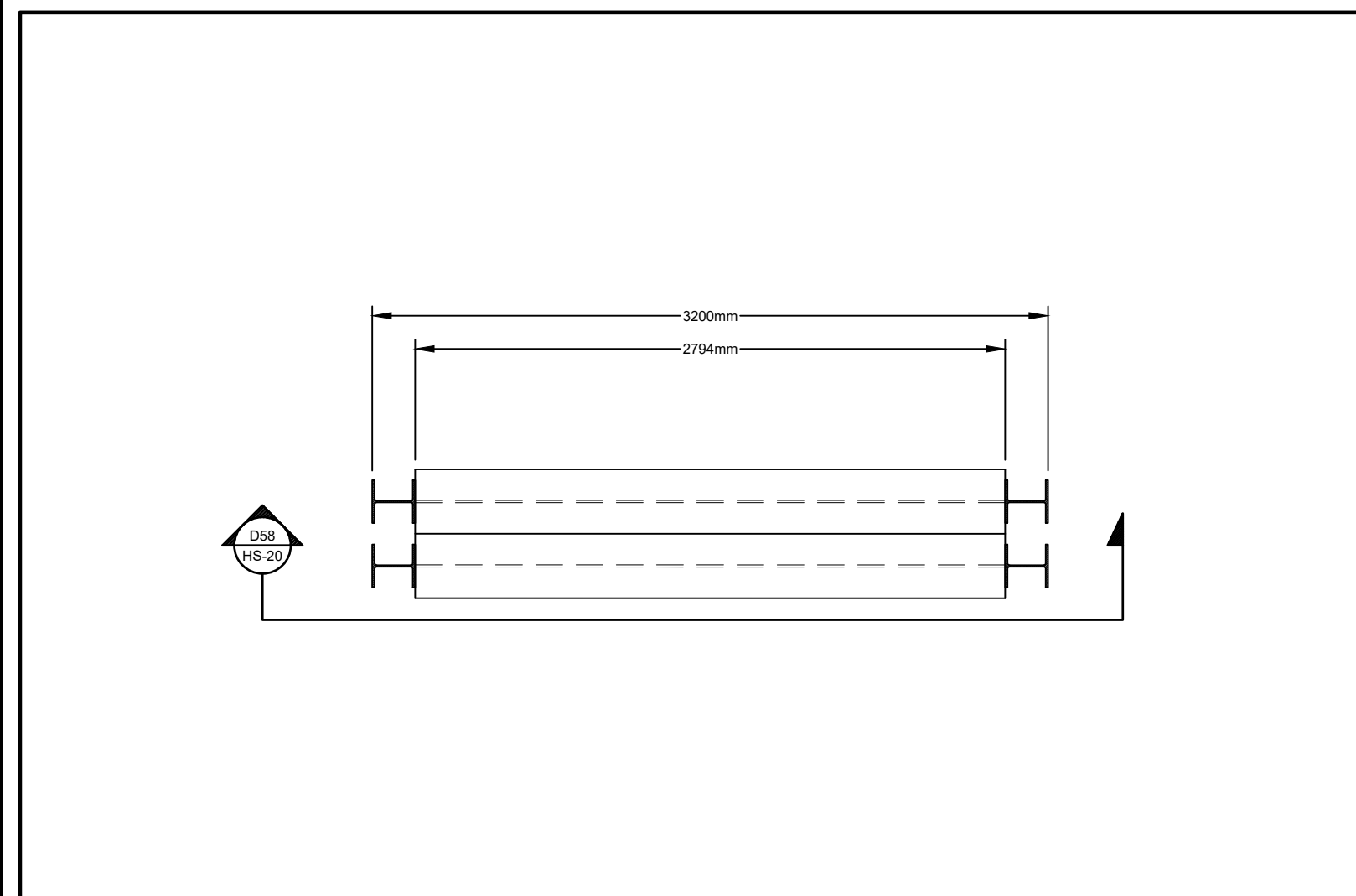
DETAIL 56: YONGE ST. TOWER 6 - BASE PLATE LOCATIONS

SCALE: 1:50



DETAIL 60: YONGE ST. TOWER 6 LEG SUPPORT - STEEL FRAME BASE PLATE TO CONCRETE WALL CONNECTION

SCALE: 1:20



DETAIL 57: YONGE ST. TOWER 6 LEG SUPPORT - STEEL FRAME PLAN

SCALE: 1:30

DO NOT SCALE DRAWINGS.

THE CONTRACTOR SHALL CHECK AND VERIFY ALL DIMENSIONS AND OMISSIONS TO THE CONSULTANT BEFORE PROCEEDING WITH THE WORK. THIS DRAWING SHALL NOT BE REPRODUCED IN ANY MANNER, IN PART OR IN WHOLE, FOR ANY PROJECT OTHER THAN THAT FOR WHICH IT WAS PREPARED. THIS DRAWING AND ALL DESIGN CONCEPTS THEREON, ARE AN INSTRUMENT OF PROFESSIONAL SERVICE AND REMAIN THE PROPERTY OF FACET GROUP INC.

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SECTION/DETAIL NUMBER
 DWG No. WHERE DETAILED

No.	Revision	Date
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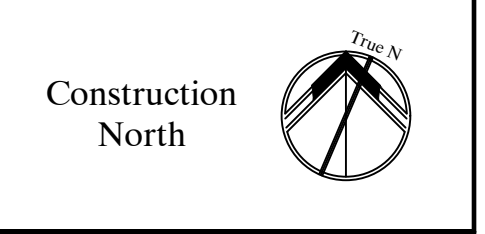
TORONTO Building
 PERMIT REVIEWED FOR COMPLIANCE WITH THE ONTARIO BUILDING CODE

19 148484 BLD 00

ZONING	
O.B.C.	Krsmanovic, Gordana 15/May/2019
FIRE SERVICES	
O.B.C. (S)	



CHECKED BY:	FIRM NO:
D.S.	30361
DRAWN BY:	
B.B.	



PROJECT LOCATION:
 YSL RESIDENCE
 385 YONGE STREET
 TORONTO, ON

PROJECT DESCRIPTION:
 EXISTING HISTORICAL
 FACADE RETENTION

Facet Group Inc.
 Heritage Building Consultants,
 Engineering and Project Management
 716 - 228 Queens Quay West
 Toronto, Ontario M5J 2X1
 Tel: 416-409-0772 | Fax: 416-469-2453
 www.facetgroup.ca | neil@facetgroup.ca

David Seberras P. Eng.
 SEBERRAS PROFESSIONAL SERVICES LTD

ENTUITIVE
 Entuitive Corporation
 200 University Avenue, 7th Floor
 Toronto, ON M5H 3C9 Canada
 entuitive.com

DRAWING TITLE:
 TOWER SUPPORT FRAME DETAILS
 AND STEEL CONNECTION DETAILS
 YONGE STREET

PROJECT NO:	DRAWING NO:
201705	HS-20
SCALE:	AS NOTED

MUNICIPAL INFRASTRUCTURE AGREEMENT

THIS AGREEMENT made this 2nd day of April, 2019

B E T W E E N:

YSL RESIDENCES INC

Hereinafter called "the Owner",

OF THE FIRST PART,

- and -

CITY OF TORONTO,

Hereinafter called "City",

OF THE SECOND PART,

WHEREAS the Owner is the registered owner of certain lands municipally known as 363 to 391 Yonge Street, 3 Gerrard Street East and 357A-357½ Yonge Street in the City of Toronto, which lands are more particularly described in Schedule "A" hereto (the "Owner's Lands");

AND WHEREAS the Owner is proposing to redevelop the said lands and has applied to the City under Section 41 of the Planning Act and Section 114 of the City of Toronto Act, 2006, as amended from time to time, for site plan approval in respect of its development for a 85-storey mixed-use building, including a nine storey podium (the "Development");

AND WHEREAS, By-law No 744-2009 enacted by Council on August 6, 2009 delegates the powers and authority granted to Council to enter into Municipal Infrastructure Agreements to the Executive Director, Engineering & Construction Services or his/her designates, the Director and Managers of Development Engineering;

AND WHEREAS the Director of Community Planning, Toronto & East York District, (the "Director"), on February 7, 2019, received the plans and drawings submitted with the Owner's application number 19 113000 STE 13 SA subject to certain conditions including a condition with respect to provision of required municipal infrastructure and subject to entering into this Municipal Infrastructure Agreement ("Agreement");

NOW THEREFORE this Agreement witnesseth that for good and valuable consideration, now paid by the City to the Owner (the receipt and sufficiency of which is hereby acknowledged) and in consideration of the mutual observance by the parties of the terms, covenants and provisos hereinafter set forth, the parties hereto agree as follows:

SECTION 1 - SCOPE OF AGREEMENT

1.1 (a) The Owner agrees to construct and complete at its expense and in a good and workmanlike manner, all the municipal infrastructure as hereinafter set out in Schedule B (the "Municipal Infrastructure"). The Municipal Infrastructure shall be constructed in accordance with accepted engineering drawings to the satisfaction of the Executive Director, Engineering & Construction Services ("Engineering & Construction Services") and the Owner shall complete, perform or make payment for such other matters as may be provided for herein.

(b) The parties acknowledge and agree that this Agreement relates to the proposed Development on the Owners' Lands described in Schedule "A" attached hereto.

(c) The Owner acknowledges and agrees that the execution of the Agreement by the City

shall not constitute acceptance or approval of any aspect of any application made under the Planning Act, and that the Owner may be required to construct additional municipal infrastructure or reconstruct a portion or all of the municipal infrastructure described in Schedule "B" should it be determined that additional work is required to support the applications made under the Planning Act, as determined by the Executive Director, Engineering & Construction Services.

SECTION 2 - CONSULTING ENGINEERS

2.1 The Owner agrees to retain a professional engineer, competent in the municipal engineering field (the "Consulting Engineer") to carry out all the necessary engineering requirements for the Development in accordance with the Performance Standards for Professional Engineers Providing Land Development Services, as amended from time to time, as prepared by the Professional Engineers Ontario until the work provided for in this Agreement is completed and acceptable to Engineering & Construction Services. The Consulting Engineer shall serve as the Owners representative in all matters related to the provision and installation of the Municipal Infrastructure and shall be the primary engineering contact with the City.

2.2 The Owner agrees to retain the said Consulting Engineer to perform without limiting the generality of the foregoing, the following services:

- (a) prepare designs of all works to be constructed, including overland flow routes and other storm water management concepts;
- (b) ensure soil investigation is carried out when soil conditions warrant and to submit the reports to the Owner and the City;
- (c) prepare and submit to the City all required drawings, cost estimates and reports;
- (d) prepare and administer where required all necessary contract(s);
- (e) obtain necessary approvals in conjunction with the City or any external authority having jurisdiction as may be necessary;
- (f) arrange and document a pre-construction meeting;
- (g) provide and confirm the field layout of all Municipal Infrastructure construction and reconstruction and site development;
- (h) provide full time on-site inspection and prepare/ submit daily inspection reports. Inspection reports shall be completed, to the satisfaction of Engineering & Construction Services and shall be submitted to Engineering & Construction Services on a weekly basis;
- (i) inspect compliance with the City specifications, and certify that the Municipal Infrastructure has been constructed and/or installed in accordance with standards, specifications and designs accepted by the City;
- (j) inspect all deficient construction works and prepare performance rectification lists for the Municipal Infrastructure;
- (k) follow-up to ensure that all Municipal Infrastructure rectifications are satisfactorily completed prior to said works being accepted by Engineering & Construction Services;
- (l) maintain all records of construction and upon completion, provide to Engineering & Construction Services a complete set of "as-built" drawings showing the final plan and profile locations of all Municipal Infrastructure, including connections to street line. The as-built drawings shall be in hard-copy and in digital format acceptable to Engineering & Construction Services; and

- (m) provide co-ordination and scheduling to comply with the timing provisions of this Agreement and its requirements.

2.3 The Owner agrees to provide the City with a letter in a form acceptable to Engineering & Construction Services indicating there is a hiring agreement or contract between it and the Consulting Engineer before commencement of construction. The said agreement or contract shall include the services to be provided by the Consulting Engineer, in accordance with this Section 2.

2.4 The agreement or contract referred to in subsection 2.3 shall provide that Engineering & Construction Services may inspect or cause to be inspected the construction of the Municipal Infrastructure and that Engineering & Construction Services has the authority to require the Owner to cease work in the event that:

- (a) safety is compromised;
- (b) work is not being performed in accordance with good engineering practices;
- (c) an adjustment to the design is required to suit conditions not known at the time of review of the engineering drawings; or
- (d) the work is being performed without full-time consultant inspection.

The Owner acknowledges and agrees that should circumstances warrant the City to require the Owner to cease work, any loss of profits or costs incurred, as a result of the stoppage of work, are at the Owner's expense.

SECTION 3 - RELEASE FOR CONSTRUCTION OF MUNICIPAL INFRASTRUCTURE

3.1 The Owner shall not commence construction of Municipal Infrastructure until Engineering & Construction Services is satisfied that the following conditions have been met:

- (a) this Agreement has been signed by the Owner;
- (b) the engineering drawings have been accepted by Engineering & Construction Services
- (c) the Owner has deposited with the City Financial Security as set out in Section 7;
- (d) the Owner has deposited with the City proof of insurance as set out in Section 4;
- (e) the Owner has deposited with the City proof of Worker Safety and Insurance Board Clearance Certificate;
- (f) the requirements set out in Schedule "B" of this Agreement to be completed prior to release of construction of the Municipal Infrastructure have been satisfied; and,
- (g) the Owner has obtained a roadway occupancy permit for works required on roads or other permits as may be required.

3.2 Upon confirmation that all of the above conditions have been satisfied by the Owner, Engineering & Construction Services will issue written permission to commence construction of the Municipal Infrastructure.

SECTION 4 - LIABILITY INSURANCE

4.1 The Owner will effect, maintain or cause to be maintained, and kept in force, a Commercial General Liability insurance policy applicable to obligations set out in this Agreement which is in a form that is satisfactory to the City's Insurance and Risk Management

Section and which is written with an insurance company licensed to transact business in the Province of Ontario. Prior to release for construction of the Municipal Infrastructure as set out in Section 3, the Owner shall submit to Engineering & Construction Services, a Certificate of Insurance using the City's current standard Certificate of Insurance Form evidencing the coverage required pursuant to this section.

4.2. The insurance policy shall provide for the following:

- a) a minimum limit of such policy shall be Five Million Dollars (\$5,000,000.00) per occurrence exclusive of interest and costs;
- b) inclusion of the City as an additional insured;
- c) coverage with respect Cross-Liability and Severability of Interests; Employer's Liability and Contingent Employer's Liability, Non-Owned Automobile Liability; and any other provisions applicable to the obligations to be carried out in connection with this Agreement; and
- d) thirty (30) days prior written notice of cancellation or material change.

4.3. The insurance policy shall be maintained in force until the completion of the applicable maintenance guarantee period and the City assumes responsibility for the Municipal Infrastructure.

4.4. The Owner shall submit a renewal certificate using the City's current standard Certificate of Insurance Form prior to the expiration of the existing policy provided pursuant to this Agreement without notice or demand by the City. If the Owner fails to pay the renewal premium, the Financial Security held by the City pursuant to this Agreement may be drawn on to cover the costs of same. In the event that the City elects to draw on the Financial Security to pay the renewal premium, the Owner will be required to resubmit the Financial Security in an amount satisfactory to the City to guarantee completion of the Municipal Infrastructure constructed under the terms of this Agreement.

4.5. The Owner further agrees to supply a Certificate of Insurance in a form and amount satisfactory to any other applicable governmental authority or to any other person whose lands or services are being worked upon, traversed or affected by the work provided for herein. The policy shall indemnify the applicable governmental authorities or person, as the case may be, from any loss arising from claims for damages, injury or otherwise in connection with the work done by or on behalf of the Owner.

SECTION 5 - INSPECTION WORK AND CONSTRUCTION OBLIGATIONS

5.1 When and where determined by Engineering & Construction Services, all Municipal Infrastructure shall be constructed and installed under the observation of inspectors employed by the City. Following release for construction of Municipal Infrastructure, the Owner agrees to ensure that its Consulting Engineer notifies Engineering & Construction Services in writing of the proposed date of commencement of construction.

5.2 The Owner agrees that Engineering & Construction Services shall have the authority to stop the construction of all or part of the Municipal Infrastructure in the event City inspections determine that adjustment to the design is required to suit actual conditions not known at the time of review of the accepted engineering drawings and such changes shall be made by the Owner at no cost to the City.

5.3 The Owner shall not restrict, and shall ensure that no person working within the Owner's Lands restricts, the normal flow of traffic within or outside the Owner's Lands without the prior written consent of Engineering & Construction Services.

5.4 The Owner shall maintain the Owner's Lands and any external lands on which the Municipal Infrastructure is being constructed in a condition free from accumulation of waste products, debris, mud and dust until the City assumes responsibility of Municipal Infrastructure pursuant to this Agreement.

5.5 The City shall be entitled to designate points of access and egress to the Development from existing City streets during the period of construction of the Municipal Infrastructure and the Development. Permanent barricades shall be erected as necessary at locations designated by Engineering & Construction Services prior to construction and shall be maintained at the Owner's expense until acceptance of the Municipal Infrastructure or as required by Engineering & Construction Services.

SECTION 6 - INDEMNIFICATION

6.1 The Owner agrees to indemnify and save the City, harmless from and against any and all loss, injury or damage or claim for loss, injury or damage in connection with installation of Municipal Infrastructure done by or on behalf of the Owner or the use including design, construction, maintenance and use of the Municipal Infrastructure prior to its acceptance by the City, including any damages incurred by reason of the Owner's failure to comply with any provision of this Agreement, save and except to the extent that any such loss, injury, damage or claim arises by virtue of the negligence or willful misconduct of the City or any of their employees, agents, representatives or any other person for whom the City is responsible for at law. The said indemnity shall apply to all of the Lands including those to be dedicated or conveyed to the City.

6.2 In the event that any action, cause of action, claim or other legal document or process or other alleged claim concerning the matters governed by the indemnity provisions of this Agreement is commenced against or imposed upon the City, the City shall, forthwith, give notice to the Owner of such document, process or claim. Upon the receipt of such notice from the City, the Owner, at its own expense and to the satisfaction of the City, shall appeal, contest, defend or settle such legal document, process or claim on behalf of the City and shall reasonably notify the City on a periodic basis of the progress of the matter. The Owner acknowledges and agrees that the City reserves the right to elect at any time to conduct its own appeal, contestation, defence or settlement negotiations at the Owner's expense after giving notice of same to the Owner.

6.3 The Owner will pay to the City on demand any loss, costs, injury, damages and expenses which may be sustained, incurred or paid by the City in consequence of the matters governed by the indemnity and defence provisions of this Agreement, provided that on default of such payment all such mentioned loss, costs, injury, damages and expenses and all such moneys so paid or payable may be deducted from the Financial Security or from moneys payable by the City to the Owner on any account whatsoever or may be recovered from the Owner in a court of competent jurisdiction as moneys paid at its request.

6.4 The Owner agrees to take all precautions necessary to protect the public against injury on the Owners Lands and other lands to be developed or used for construction purposes pursuant to the terms thereof and when necessary maintain illuminated danger signals at night and at such other times and places as may be required to ensure public safety.

SECTION 7 - FINANCIAL SECURITY

7.1 Prior to the earlier of release for construction of Municipal Infrastructure and issuance of the Statement of Approval granting final Site Plan Approval, the Owner shall provide the City with financial security to guarantee the satisfactory performance and completion of all Municipal Infrastructure and obligations required pursuant to this Agreement, including:

- (a) the provision of "as-built" drawings required under Section 2 hereof;
- (b) any Construction Lien Act claims that may be claimed against holdback as provided under the Construction Lien Act, R.S.O. 1990, c. C. 30, as amended, in respect of work done or improvements made to lands dedicated as public streets, highways or made to other public lands; and,
- (c) workmanship and materials for a period of two years from the date the Municipal

Infrastructure is accepted in writing by Engineering & Construction Services.

7.2 The financial security shall be in the form of a certified cheque or an irrevocable standby letter of credit satisfactory to the City Treasurer or any combination thereof and shall be in an amount to be determined by Engineering & Construction Services, whose decision shall be final (the "Financial Security").

7.3 The irrevocable standby Letter of Credit shall be in the form and from a financial institution acceptable to the City Treasurer.

7.4 The Owner acknowledges and agrees the Financial Security submitted to the City in the form of a certified cheque will be placed in a non-interest bearing account.

7.5 The Owner agrees that the Financial Security, as may be reduced in accordance with this Section, will be maintained in full force and effect until the expiry of the maintenance guarantee period and the City assumes responsibility for the Municipal Infrastructure pursuant to subsection 8.4.

7.6 At the request of the Owner and with the approval of Engineering & Construction Services the maintenance guarantee period may be established for stages of the work rather than for the complete works.

7.7 The amount held as Financial Security may, at the discretion of Engineering & Construction Services, be reduced:

- (a) on completion of the construction/installation of all or any portion of the Municipal Infrastructure and prior to the City assuming responsibility therefore, and
- (b) upon receipt of the Owner's Consulting Engineer's certification of the cost of the outstanding Municipal Infrastructure yet to be constructed or completed pursuant to this Agreement.

7.8 The amount of the Financial Security remaining on deposit following a reduction shall be sufficient to guarantee:

- (a) 100% of the estimated cost to complete the Municipal Infrastructure outstanding at that time;
- (b) the provision of Engineering services and other professional services required by Section 2 and which are necessary to complete the Municipal Infrastructure outstanding at that time;
- (c) the value of the holdbacks required to be retained by the Owner, or any other proper payer, under Part IV of the *Construction Lien Act* with regard to the construction or installation of any portion of the Municipal Infrastructure located on a public street or highway or any lands owned by the City or in which the City has an interest. The Owner agrees to submit to the City all such documentation as is necessary to verify the amount of the holdbacks required to be retained as well as any further documentation which may be required by the City; and
- (d) ten percent (10%) of the value of workmanship and materials for a minimum period of two (2) years from the date the Municipal Infrastructure are completed and accepted in writing by Engineering & Construction Services; however,

in no event shall the amount of the reduced Financial Security be less than twenty percent (20%), of the original cost of all Municipal Infrastructure. Of that twenty percent (20%), ten percent (10%) is

to guarantee workmanship and ten percent (10%) is to guarantee performance of the Owner's construction lien obligations.

7.9 The Owner may be entitled to more than one reduction of the Financial Security prior to the City assuming responsibility for the Municipal Infrastructure provided that the provisions of this subsection are complied with, all to the satisfaction of Engineering & Construction Services.

7.10 Notwithstanding the provisions of this Section, the Owner acknowledges and agrees that no reduction in Financial Security will be considered if the Owner is in default pursuant to this Agreement.

SECTION 8 - TIME LIMIT FOR WORK, ACCEPTANCE AND MAINTENANCE GUARANTEE

8.1 The Owner shall complete the Municipal Infrastructure required under this Agreement within **two (2)** years from the date of this Agreement, except as may be specifically stated otherwise for in Schedule B.

8.2 The Owner shall, at its sole cost and expense, warrant and guarantee the workmanship and materials of all Municipal Infrastructure for a minimum period of two years from the date that the Municipal Infrastructure is accepted by Engineering & Construction Services.

8.3 Engineering & Construction Services shall consider acceptance of the Municipal Infrastructure upon receipt of "as-built" drawings in hard copy and digital form showing the final plan and profile locations of all Municipal Infrastructure work and written certification from the Owner's Consulting Engineer that the Municipal Infrastructure has been fully and finally constructed or carried out in accordance with the accepted engineering drawings, City Standards and Specifications and good engineering practices.

8.4 Following completion of the maintenance guarantee period Engineering & Construction Services, if satisfied with the Municipal Infrastructure, shall, on behalf of the City, assume responsibility for the Municipal Infrastructure. Provided that all matters related to the Municipal Infrastructure have been completed to satisfaction of the City, all outstanding payments and invoices have been made and the City is not aware of any claims against it in connection with this Agreement or matters related hereto, Engineering & Construction Services shall authorize the release of the Financial Security.

SECTION 9 - INCOMPLETE OR FAULTY WORK

9.1. If, in the opinion of Engineering & Construction Services for all Municipal Infrastructure installed pursuant to this Agreement, acting reasonably:

- (a) the Owner is not prosecuting or causing to be prosecuted the work required in connection with this Agreement within the specified time, or the Owner is improperly performing the work;
- (b) the Owner is not completing the Municipal Infrastructure in accordance with the accepted engineering drawings;
- (c) the Owner is not completing work under this Agreement within the specified time agreed upon;
- (d) the Owner is neglecting or has abandoned the work before completion;
- (e) the Owner is unreasonably delaying the work with the result that the conditions and covenants of this Agreement are being violated;
- (f) the Owner is failing to complete the work or has carried out faulty work, or is carrying out the work in a careless manner, or proceeding in bad faith with respect to

any of the work in this Agreement;

- (g) the Owner is neglecting or refusing to renew or to again perform such work as may have been rejected by Engineering & Construction Services as being defective or unsuitable; and/or
- (h) the Owner is proceeding or acting in any other manner which, in the opinion of Engineering & Construction Services, causes a default in the performance of the terms of this Agreement;

then, in any such case, Engineering & Construction Services shall notify the Owner of such default or neglect hereof and shall set out the deficiencies to be remedied.

9.2 If such notification of default is without effect, and the Owner is not proceeding to remedy or carry out the matters in default within the time specified in the notice then Engineering & Construction Services may immediately draw upon the Financial Security to purchase such materials, tools and machinery and to employ such workers as are required for the proper completion of the Municipal Infrastructure at the cost and expense of the Owner. The Owner acknowledges that the City has the right in the case of a default by the Owner to carry out the terms of this Agreement, to enter upon the Owners Lands in order to comply with the provisions of this Agreement.

9.3 Where, in the opinion of Engineering & Construction Services, a state of emergency exists concerning the Municipal Infrastructure or Development, any required work may be done by the City to rectify the situation at the Owner's expense without prior notice to the Owner. The City agrees to notify the Owner forthwith in writing of the steps being carried out. The cost and expense of such emergency work shall be calculated by Engineering & Construction Services whose decision shall be final and conclusive.

9.4 The authority of Engineering & Construction Services shall include the right of entry onto the property by the Executive Director or by any designated employees, agents or servants, to carry out the works under this section. Such entry by the City shall be as an agent for the Owner and shall not be deemed, for any purposes whatsoever, as an acceptance of the said Municipal Infrastructure or the work by the City.

9.5 It is understood and agreed that the total costs for all work done under the authority of this section exclusive of emergency work shall include a management fee of twenty per cent (20%) of all labour, material and machine time charges incurred to complete the work, and further, a fee of thirty per cent (30%) of the charges incurred for the dislocation and inconvenience caused to the City as a result of such default on the part of the Owner. It is understood and agreed that the aforementioned costs and fees as expressed in percentages are liquidated damages and are not to be deemed to be a penalty.

9.6 It is hereby declared and agreed that the assumption by the Owner of the obligations imposed by this paragraph is one of the considerations without which the City would not have executed this Agreement.

SECTION 10 - GENERAL PROVISIONS

10. The Owner acknowledges and agrees with the City that:

- (a) Qualitative or Quantitative Tests

Engineering & Construction Services may have qualitative or quantitative tests made of any materials which have been, or are proposed to be used in the construction of any Municipal Infrastructure required by this Agreement and the cost of such tests shall be paid by the Owner within 14 days of the account being rendered by the City;

- (b) Relocation of Existing Services

The Owner shall pay the cost of relocating any existing municipal infrastructure caused by the Development within 14 days of the account for same being rendered by the City;

(c) Specifications

Unless otherwise specified, any work required to be done under this Agreement by the Owner shall be according to the standards and specifications of the City as may be modified from time to time and Provincial standards as may be required by Engineering & Construction Services (the "City Standards and Specifications");

(d) Engineering Drawings

The Owner shall provide "as-built" drawings in hard copy and digital form respectively for the Municipal Infrastructure work, to the City prior to acceptance of the Municipal Infrastructure by the City. The Owner further agrees to provide a copy of the accepted engineering drawings within sixty (60) days on demand if the City requires the drawings at any time during the development of the Owner's Lands;

(e) Siltation Control

The Owner shall, at its expense, install and maintain all siltation control devices as required by Engineering & Construction Services at all times during construction of the Municipal Infrastructure and the Development;

(f) Damages to Municipal Infrastructure

The Owner shall to the satisfaction of Engineering & Construction Services and at its own expense, restore all existing municipal infrastructure that may be damaged due to activities related to the Development;

(g) Interest

Interest shall be payable by the Owner to the City on all sums of money payable herein which are not paid on the due dates. The due date of any sum of money shall be thirty (30) days after the date of the invoice. The interest rate shall be prime interest rate prevailing on the due date of the invoice and the amount of the interest shall be determined by the Treasurer for the City whose decision in this matter shall be final; and

(h) Cancellation of Agreement

In the event the development has not proceeded within **two (2) years from the date of this agreement**, the City may, at its option on one month's written notice to the Owner, declare this Agreement to be null and void;

(i) Soil Investigation Reports

The Owner shall provide soil investigation reports from a competent soils engineer if soil conditions warrant in the opinion and where recommended by the Owner's Consulting Engineer; and

(j) Right to Enter

The City may enter onto the Owner's Lands at any time, to inspect the Municipal Infrastructure but such inspection will not constitute the City's acceptance of the Municipal Infrastructure or any part of the Municipal Infrastructure.

SECTION 11 - NOTIFICATION

11.1 Any notice given by the City to the Owner pursuant to this Agreement will be sufficiently given if in writing and sent by prepaid registered mail, delivered personally (including by courier) or delivered by facsimile transmission to the Owner at:

YSL Residences Inc
 c/o Ryan Millar
 59 Hayden Street, Suite 200
 Toronto, Ontario
 M4Y 0E7
 Phone (416) 230-0648
 Fax (416) 955-9452

or such other address as the Owner has given the City in writing.

11.2 Any notice given by the Owner to the City pursuant to this Agreement will be sufficiently given if in writing and sent by prepaid registered mail delivered personally (including by courier) or delivered by facsimile transmission to the City at:

City Clerk City of Toronto City Hall, West Tower 12 th Floor, 100 Queen Street West Toronto, ON M5H 2N2 Fax: 416-392-2980	Copy to:	Director of Development Engineering City of Toronto Metro Hall, 16 th floor 55 John Street Toronto ON M5V 3C6 Fax: 416-392-4426
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or such other address as the City Solicitor has given to the Owner in writing.

11.3 Notice given pursuant to Section 9.1 and 9.2 hereof shall be deemed to have been delivered on the third business day after its mailing by prepaid registered mail or on the day of delivery if delivered personally or if delivered by facsimile transmission and for which confirmation of receipt has been received.

SECTION 12 - CONSTRUCTION LIEN ACT

12.1 The Owner agrees to comply with the provisions of the *Construction Lien Act* including, but not limited to, ensuring that holdbacks are retained in accordance with Part IV of that Act with respect to the supply of services or materials for the Municipal Infrastructure.

12.2 If any lien is preserved or written notice of lien given pursuant to the *Construction Lien Act* for the supply of services or materials in connection with the construction, installation or maintenance of any portion of the Municipal Infrastructure located on a public street or highway or any lands owned by the City or in which the City has an interest, the Owner forthwith shall give written notice to the City of such document, process or claim.

12.3 The Owner shall indemnify, defend and save the City harmless, from and against any and all claims, actions or demands made against the City in connection with the *Construction Lien Act* and all costs incurred by the City as a result thereof. In the event that any action, cause of action, claim or other legal document or process or other alleged claim is commenced against or imposed upon the City, the City shall, forthwith, give notice to the Owner of such document, process or claim. Upon the receipt of such notice from the City, the Owner, at its own expense and to the satisfaction of the City, shall appeal, contest, defend or settle such legal document, process or claim on behalf of the City and reasonably notify the City on a periodic basis of the progress of the matter. The Owner acknowledges and agrees that the City reserves the right to elect at any time to conduct its own appeal, contestation, defence or settlement negotiations at the Owner's expense after giving notice of same to the Owner.

12.4 If any lien is preserved or written notice of lien given pursuant to the *Construction Lien Act* for the supply of services or materials in connection with the construction, installation or

maintenance of any portion of the Municipal Infrastructure located on a public street or highway or any lands owned by the City or in which the City has an interest, the Owner shall be considered to be in default in accordance with the terms of this Agreement, until all such claims for lien, together with any associated certificates of action, are discharged or vacated or such written notices of lien are withdrawn or a Court declaration is obtained that the written notices of lien are no longer binding or that the related liens have expired.

12.5 The Owner acknowledges and agrees that no reduction in Financial Security will be considered if the Owner is in default of the provisions of this Section.

SECTION 13 - ASSIGNMENT OF AGREEMENT

13. The Owner may assign this Agreement only with the written consent of the City.

SECTION 14 - OWNERSHIP

14.1 The Owner warrants and represents that it is the registered owner of the Owner's Lands.

14.2 Wherever in this Agreement the word "Owner" and the pronoun "it" is used, it shall be read and construed as "Owner or Owners" and "his", "her", or "their", respectively, as the number and gender may require and the number of the verb agreeing therewith shall be constructed accordingly.

14.3. This Agreement shall enure to the benefit of and be binding upon the parties hereto, their successors and assigns.

SECTION 15 - PERFORMANCE

15.1 No remedy herein conferred upon or reserved to the City shall exclude any other remedy, but each remedy shall be cumulative and in addition the every other remedy given hereunder or hereafter existing at law or in equity or by statute.

15.2 The failure of the City at any time to require, or decision not to require, performance by the Owner of any obligation under this Agreement shall not constitute a waiver by the City to require full and complete performance of such obligation, or any other obligation of the Owner under this Agreement, and shall in no way affect the City's rights thereafter to enforce such obligation.

15.3 The Owner acknowledges that any breach of this Agreement by it would not be adequately compensated by payment of damages and, accordingly, the Owner admits that specific performance is an appropriate form of remedy in the event of default by the Owner.

SECTION 16 – MISCELLANEOUS

16.1 Schedules "A" and "B" attached hereto form part of this Agreement.

16.2 The headings in the body of this Agreement do not form part of the Agreement and are deemed to be inserted for convenience of reference only.

16.3 This Agreement shall be construed with all changes in number and gender as may be required by the context.

16.4 Any amendment or modification to this Agreement shall be of no force and effect unless in writing and signed by all Parties.

16.5 Reference to an official shall be deemed to include a reference to the official of the City who performs the duties of such referenced person from time to time.


16.6 The Parties hereto acknowledge and agree that the City shall be deemed not to be an owner for the purposes of this Agreement despite any interest it may have in lands it presently owns or lands it may acquire and to which this Agreement applies.

16.7 Time shall be of the essence of this Agreement

IN WITNESS WHEREOF the parties have here unto caused their proper signing officers duly authorized in that behalf to sign this agreement as of the day and year first above written.

SIGNED, SEALED AND DELIVERED

YSL RESIDENCES INC



Name: Daniel Casey
Title: President

Name:
Title:

I/We have authority to bind the corporation

CITY OF TORONTO



Manager, Development Engineering, Toronto & East York District for the Executive Director, Engineering & Construction Services

I have authority to bind the Corporation.

Authorized by Item 26.9 of the Planning and Growth Management Committee, as adopted by the Council of City of Toronto at its regular meeting held on August 5 and 6, 2009

SCHEDULE "A"**OWNER'S LANDS**

	Municipal Address	Property Identifier Number	Legal Description
1.	363-365 Yonge Street, Toronto, Ontario	PIN: 21101-0049 (LT)	PT LT 31 E/S YONGE ST PL 22A TORONTO AS IN EP126440; TORONTO, CITY OF TORONTO
2.	367 Yonge Street, Toronto, Ontario	PIN: 21101-0048 (LT)	PT LT 31 E/S YONGE ST, 32 E/S YONGE ST PL 22A TORONTO AS IN CA761626; TORONTO , CITY OF TORONTO
3.	369-371 Yonge Street, Toronto, Ontario	PIN: 21101-0047 (LT)	PT LT 32 E/S YONGE ST PL 22A TORONTO AS IN CA472341; TORONTO , CITY OF TORONTO
4.	373-375 Yonge Street, Toronto, Ontario	PIN: 21101-0046 (LT)	PT LT 33 E/S YONGE ST PL 22A TORONTO AS IN CA540937; TORONTO, CITY OF TORONTO
5.	377 Yonge Street, Toronto, Ontario	PIN: 21101-0045 (LT)	PT LT 33 E/S YONGE ST PL 22A TORONTO AS IN CA310343; TORONTO , CITY OF TORONTO
6.	379 Yonge Street, Toronto, Ontario	PIN: 21101-0044 (LT)	PT LT 34 E/S YONGE ST PL 22A TORONTO AS IN CT497024; TORONTO, CITY OF TORONTO
7.	381 Yonge Street, Toronto, Ontario	PIN: 21101-0043 (LT)	PART OF LOT 34 ON THE EAST SIDE OF YONGE STREET, PLAN 22A AS DESCRIBED IN INSTRUMENT NO. OT46105, CITY OF TORONTO
8.	385 Yonge Street, Toronto, Ontario	PIN: 21101-0042 (LT)	LT 35 E/S YONGE ST, 36 E/S YONGE ST PL 22A TORONTO; TORONTO , CITY OF TORONTO
9.	357 1/2 Yonge Street, Toronto, Ontario	PIN: 21101-0053 (LT)	PT LT 29 E/S YONGE ST PL 22A TORONTO AS IN CT853134; T/W CT853134; TORONTO, CITY OF TORONTO
10.	357A Yonge Street, Toronto, Ontario	PIN: 21101-0052 (LT)	PT LT 29 E/S YONGE ST, PL 22A TORONTO AS IN CT891553, CITY OF TORONTO

SCHEDULE "B"

**TO THE MUNICIPAL INFRASTRUCTURE AGREEMENT,
MADE THE 2nd DAY OF April , 2019,
BETWEEN YSL RESIDENCES INC AND CITY OF TORONTO**

MUNICIPAL INFRASTRUCTURE REQUIREMENTS

SITE SPECIFIC PROVISIONS

The work shall consist of the following:

- *Remove and return to the City the existing fire hydrant on the south side of Gerrard Street East, approximately 15 m east of Yonge Street;*

and all associated work and appurtenances, including valves, etc., as identified on the approved drawings and reports listed below.

The work also includes all site preparation and maintenance, including dewatering activities in accordance with a Sanitary Discharge Agreement (if required) and any traffic management and control work throughout the construction period that may be necessary.

Section 2.2(a) notwithstanding, the works shall be constructed in accordance with the following documentation:

- *Hydrant Removal Plan, Drawing No. 1 of 1, revision 1, dated March 20, 2019, prepared by The Odan/Detech Group Inc.;*

The Owner agrees to construct the above noted works at no cost to the City. In accordance with Section 7 of this Agreement, the Owner shall provide a financial guarantee in the amount of \$11,700.00 to ensure the satisfactory completion of the works, submit a certified cheque in the amount of \$580.00 for engineering and inspection fees, and provide public liability insurance, as required, all to the satisfaction of the Executive Director, Engineering & Construction Services.

All work shall be completed in accordance with the City's Standards and Specifications and must be completed to the satisfaction of the Executive Director, Engineering & Construction Services.

The Owner must make a separate application to the General Manager, Transportation Services for permits to carry out any works involving the construction in, or occupancy of, the City right-of-ways, including the sidewalk and public boulevard streetscaping work.

All waste material, including any excess soils, shall be removed and disposed of off-site by the Owner in accordance with Ministry of the Environment, Conservation & Parks regulations and all other applicable statutory requirements.

Appendix 3

AGREEMENT OF PURCHASE AND SALE

The undersigned, **Ryan Millar** (collectively, the "Purchaser"), hereby agrees with **THE CLOVER ON YONGE INC.** (the "Vendor") to purchase Unit No. 10 Level No. 11, Suite No. 1210, as outlined for identification purposes on the draft plan of condominium attached hereto as Schedule "A", being a proposed unit in the Condominium to be located at 595 Yonge Street, Toronto together with an undivided interest in the common elements appurtenant to the unit and the exclusive use of those parts of the common elements attached to such unit, if any, as set out in the proposed Declaration (hereinafter collectively called the "Unit") on the following terms and conditions:

- The purchase price of the Unit (the "Purchase Price") is Four Hundred Thirty Nine Thousand Nine Hundred (\$ 439,900.00) DOLLARS (as more particularly set forth and subject to the provisions of Subsection 7(d) of this Agreement) of lawful money of Canada payable as follows:
 - to Dale & Lessmann LLP, In Trust (the "Escrow Agent" or the "Vendor's Solicitors"), in the following amounts at the following times, by cheque or bank draft, as deposits pending completion or other termination of this Agreement and to be credited on account of the Purchase Price on the Closing Date:
 - the sum of Twenty One Thousand Nine Hundred Ninety Five (\$ 21,995.00) DOLLARS accompanying this Agreement as an initial deposit;
 - the sum of Twenty One Thousand Nine Hundred Ninety Five (\$ 21,995.00) DOLLARS submitted with this Agreement and post-dated ninety (90) days after the date of execution of this Agreement by the Purchaser;
 - the sum of Twenty One Thousand Nine Hundred Ninety Five (\$ 21,995.00) DOLLARS submitted with this Agreement and post-dated one hundred and eighty (180) days after the date of execution of this Agreement by the Purchaser;
 - the sum of Twenty One Thousand Nine Hundred Ninety Five (\$ 21,995.00) DOLLARS submitted with this Agreement and post-dated four hundred and fifty (450) days after the date of execution of this Agreement by the Purchaser;
 - the sum of Twenty One Thousand Nine Hundred Ninety Five (\$ 21,995.00) DOLLARS as a further deposit by way of bank draft or certified solicitor's trust cheque on the Occupancy Closing Date (as hereinafter defined);
 - The balance of the Purchase Price subject to the adjustments hereinafter set out, by way of bank draft or certified solicitor's trust cheque payable to the Vendor's Solicitors, In Trust, on the Unit Transfer Date.
- The amounts payable pursuant to clauses 1(a)(i) to (v), both inclusive, are hereinafter referred to as the "Deposit" or "Deposits", as the case may be. All Deposits shall be credited towards the Purchase Price on the Unit Transfer Date. The Purchaser shall deliver post-dated cheques for the amounts set out in clauses 1(a)(i) to (v) upon execution of this Agreement. The Deposits may be released by the Escrow Agent to the Vendor in accordance with Section 6 of this Agreement.
- In accordance with Section 73 of the Act, any purchaser, before receiving delivery of a Transfer of his Unit, may rescind the Agreement of Purchase and Sale within ten (10) days of the later of the date of receipt by the Purchaser of the Disclosure Statement and the date of receipt by the Purchaser of a copy of the Agreement of Purchase and Sale executed by the Purchaser and the Vendor.

The Purchaser hereby acknowledges that the acceptance of this offer by the Vendor is irrevocable by the Purchaser until 6:00 p.m. on the 15th day after the date of execution by the Purchaser, after which time, if not accepted, this offer shall be null and void and the deposit referred to in paragraph 1(a) above shall be returned to the Purchaser without interest or deduction. When accepted, this offer shall constitute a binding agreement of purchase and sale wherein time shall in all respects be of the essence. The parties acknowledge and agree that acceptance of this offer shall be conclusively deemed to have been made if this Agreement is executed by the Vendor and made available for pick up by the Purchaser at the Vendor's sales office on or before the irrevocable date herein set forth, without requiring that notice of acceptance or a fully executed counterpart of this Agreement be delivered to the Purchaser.

All provisions of this Agreement, including Sections 4 to 55, both inclusive, contained on the following pages and those set out in Schedules "A", "B", "C" and "D" to this Agreement, the Tarion Addendum to Agreement of Purchase and Sale, together with the appendix thereto containing Additional Early Termination Conditions and the Tarion Statement of Critical Dates which are attached hereto are an integral part hereof. The Purchaser acknowledges that he/she has read all provisions and schedules of this Agreement, the Tarion Addendum to Agreement of Purchase and Sale together with the appendix thereto and the Tarion Statement of Critical Dates and agrees to be bound by each of them.

DATED at Toronto, this 22 day of December, 2015.

SIGNED, SEALED AND DELIVERED
in the presence of.

Witness
(as to all signatures if more than one Purchaser)


PURCHASER

Print Name: Ryan Millar
Date of Birth: February 19, 1978 S.I.N. 506-760-990
Driver's License: _____

PURCHASER

Print Name: _____
Date of Birth: S.I.N. _____
Driver's License: _____

PURCHASER'S ADDRESS

80 Brookside Drive
Suite No. _____ Street Name _____
Toronto ON M4E 2M1
City. Province Postal Code
Telephone (Bus.) _____ Telephone (Home) _____
Facsimile _____ e-mail _____

PURCHASER'S SOLICITOR

Name _____
Suite No. _____ Street Name _____
City _____ Province _____ Postal Code _____
Telephone _____ Facsimile _____

The undersigned accepts the above offer and agrees to complete this transaction in accordance with the terms hereof.

DATED at Toronto, this 22 day of December, 2015.

Vendor's Solicitors
DALE & LESSMANN LLP
Barristers and Solicitors
Suite 2100, 181 University Avenue
Toronto, Ontario, M5H 3M7
Attention: Patricia E. Dunn, Solicitor
or Jessica Boyle, Law Clerk
Telephone: (416) 863-1010
Facsimile: (416) 863-1009
e-mail: jboyle@dallelessmann.com


Per: _____
Name: _____
Title: Authorized Signing Officer
I have authority to bind the Corporation.

Unit 1210	1	Floor Plan Dragonfly			
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FOYER/KITCHEN/LIVING/DEN

ITEM	COMPONENT - DESCRIPTION	PRICE
1	FOYER/KITCHEN/LIVING/DEN FLOORING - Standard - Laminate Flooring - Evoke: Noah Oak - 7 5/8inch x 5/16inch--10 Note:	

KITCHEN

ITEM	COMPONENT - DESCRIPTION	PRICE
2	KITCHEN COUNTER - Standard - Kitchen Countertop - Caesarstone Quartz- Blizzard 2141 - 3/4inch Edge -Polished--40 Note:	
3	KITCHEN CABINERY - Upgrade - Kitchen Hardware: Scav - 20309_160 - Satin --88 Note:	\$ 200.00
4	KITCHEN CABINERY - Upgrade - Scavolini Kitchen Cabinetry - Calicot SCAV 736 - 8ft Height --88 Note:	\$ 2,069.00
5	KITCHEN BACKSPLASH - Standard - Kitchen Backsplash Tile - Farrow - Dorrset White - 2inch x 10inch - Gloss with Grout - White 00--88 Note:	

MASTER BEDROOM

ITEM	COMPONENT - DESCRIPTION	PRICE
6	MASTER BEDROOM CLOSET SLIDERS - Upgrade - Master Bedroom Closet Slidders - to Frameless Mirror Closet Slidder - 2 Panels--88 Note:	\$ 799.00

MASTER BATHROOM

ITEM	COMPONENT - DESCRIPTION	PRICE
7	MASTER BATHROOM COUNTER - Standard - Master Bathroom - Bathroom Countertop - Marble-Venatino - 3/4inch Edge - Polished--40 Note:	
8	MASTER BATHROOM FLOOR TILE - Standard - Porcelain - Tile Floor/ Tub Skirt - Pietra - Dolomite - 12inch x 24inch - Gloss with Grout - White 00--88 Note:	
9	MASTER BATHROOM BATHTUB WALL TILE - Standard - Porcelain - Tub/Shower Wall Tile - Pietra - Dolomite - 12inch x 24inch - Gloss with Grout - White 00--88 Note:	
10	MASTER BATHROOM VANITY - Upgrade - Master Bathroom - Bathroom Vanity - TITANIUM GREY GLOSSY LACQUER SCAV 358 Hardware: Scav - 31610_160 - Aluminum - Standard--88 Note:	\$ 696.00

SECOND BATHROOM

ITEM	COMPONENT - DESCRIPTION	PRICE
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TAX#:1

Printed: 23-May-19 at 5:08 pm

PE 6,474-1

Decor

Builder

Purchaser

Unit 1210	1	Floor Plan Dragonfly			
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SECOND BATHROOM

ITEM	COMPONENT - DESCRIPTION	PRICE
11	SECOND BATHROOM COUNTER - Standard - Second Bathroom - Countertop - White Cultured Marble--40 Note:	
12	SECOND BATHROOM SHOWER WALL TILE - Standard - Porcelain -Shower Wall Tile - Pietra - Dolomite - 12inch x 24inch - Gloss with Grout - White 00--52 Note:	
13	SECOND BATHROOM SHOWER FLOOR - Upgrade- Bathroom - Shower Floor -Ontario Series: Snow White - Hexagon - Matte - 12" x 12" with Grout - White 00--70 Note:	\$ 375.00
14	SECOND BATHROOM FLOOR TILE - Standard - Porcelain - Tile Floor- Pietra - Dolomite - 12inch x 24inch - Gloss with Grout - White 00--88 Note:	
15	SECOND BATHROOM VANITY - Upgrade - Second Bathroom - Bathroom Vanity - TITANIUM GREY GLOSSY LACQUER SCAV 358 Hardware: Scav - 31610_160 - Aluminum - Standard--88 Note:	\$ 696.00
16	SECOND BATHROOM SHOWER THRESHOLD - Standard - Bathroom - Shower Threshold - White Quartz--88 Note:	



\$4,835.00 Sub Total
\$628.55 HST
\$5,463.55 Total

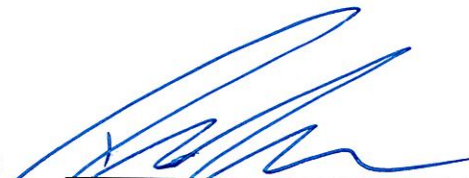
This is your direction to install the above extras in accordance with the following terms and conditions:

- In the event the work on the unit has progressed beyond the point where the items covered by this extra cannot be installed without entailing any unusual expense, then this order is to be cancelled and any deposit paid in connection with the same is to be refunded to the Purchaser.
- The Vendor will undertake to incorporate the work covered by the sales extra in the construction of the unit but will not be liable to the purchaser in any way, if for any reason the work covered by the extra is not carried out. In that event, any monies paid in connection with the same shall be returned to the Purchaser.
- It is understood and agreed that if for any reason whatsoever the transaction of Purchase and Sale is not completed, the total cost of extras ordered are not refundable to the Purchaser(s).
- Extras or changes will not be processed unless signed by the Vendor.
- These extras may not be amended without the written consent of THE CLOVER ON YONGE INC..
- The Purchaser(s) and the Vendor acknowledge and agree that this form shall not be deemed to be part of the Agreement of Purchase and Sale entered into between them, nor an addendum thereto.
- Any cancellations to this order, providing they can be cancelled, are subject to a \$500 minimum administration charge and a 10% cancellation charge for the total amount being cancelled.

Payment Summary		
<u>Paid By</u>	<u>Amount</u>	<u>Detail</u>
<u>Total Payment:</u>		_____

Unit 1210	1	Floor Plan Dragonfly			
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PURCHASER:


Ryan Millar

23-May-19
DATE

CONSULTANT:


Shauna Kerr

VENDOR:

PER: THE CLOVER ON YONGE INC.

TAX#:1

PE 6.474-3

Printed: 23-May-19 at 5:08 pm

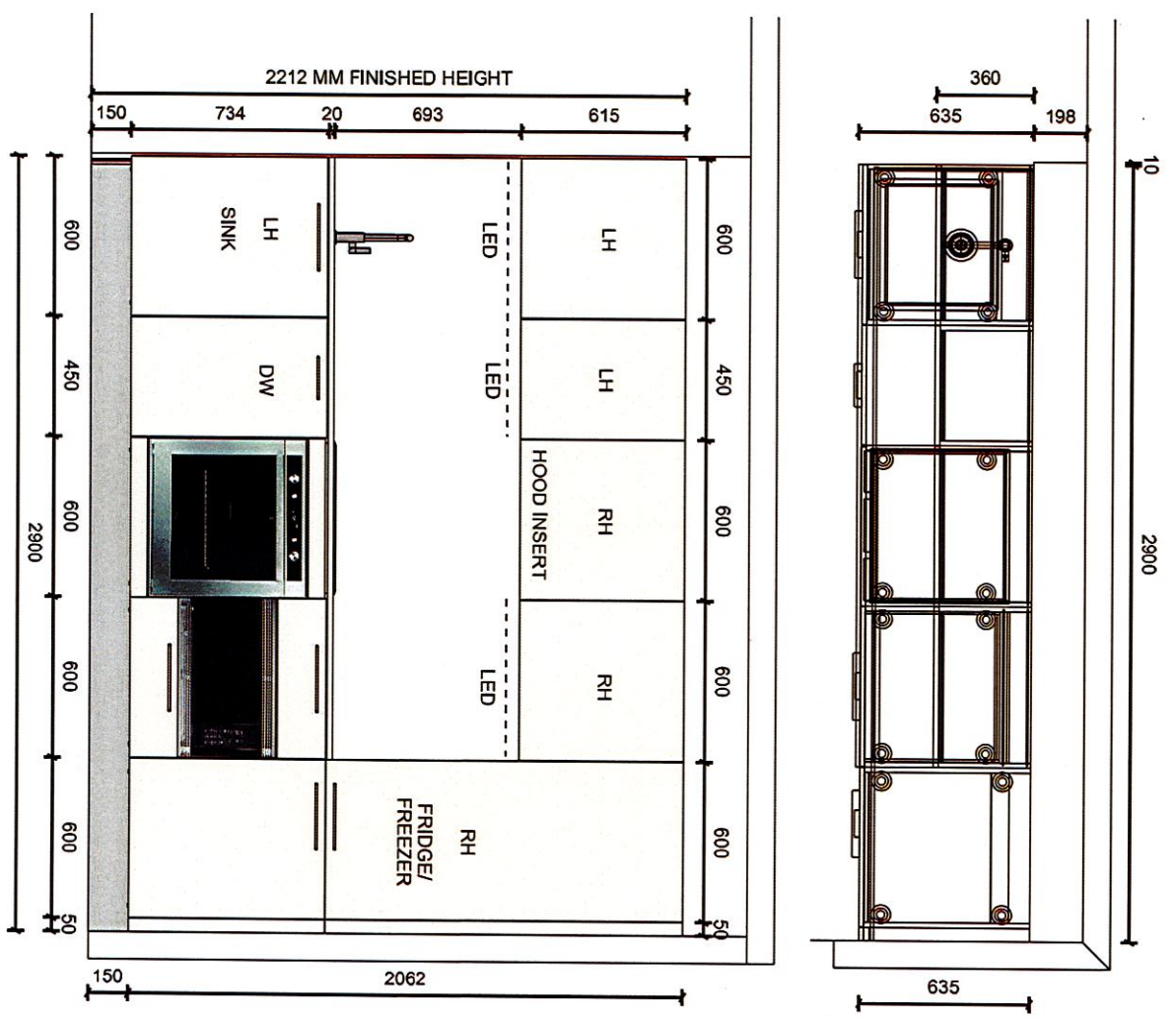
Decor

Builder

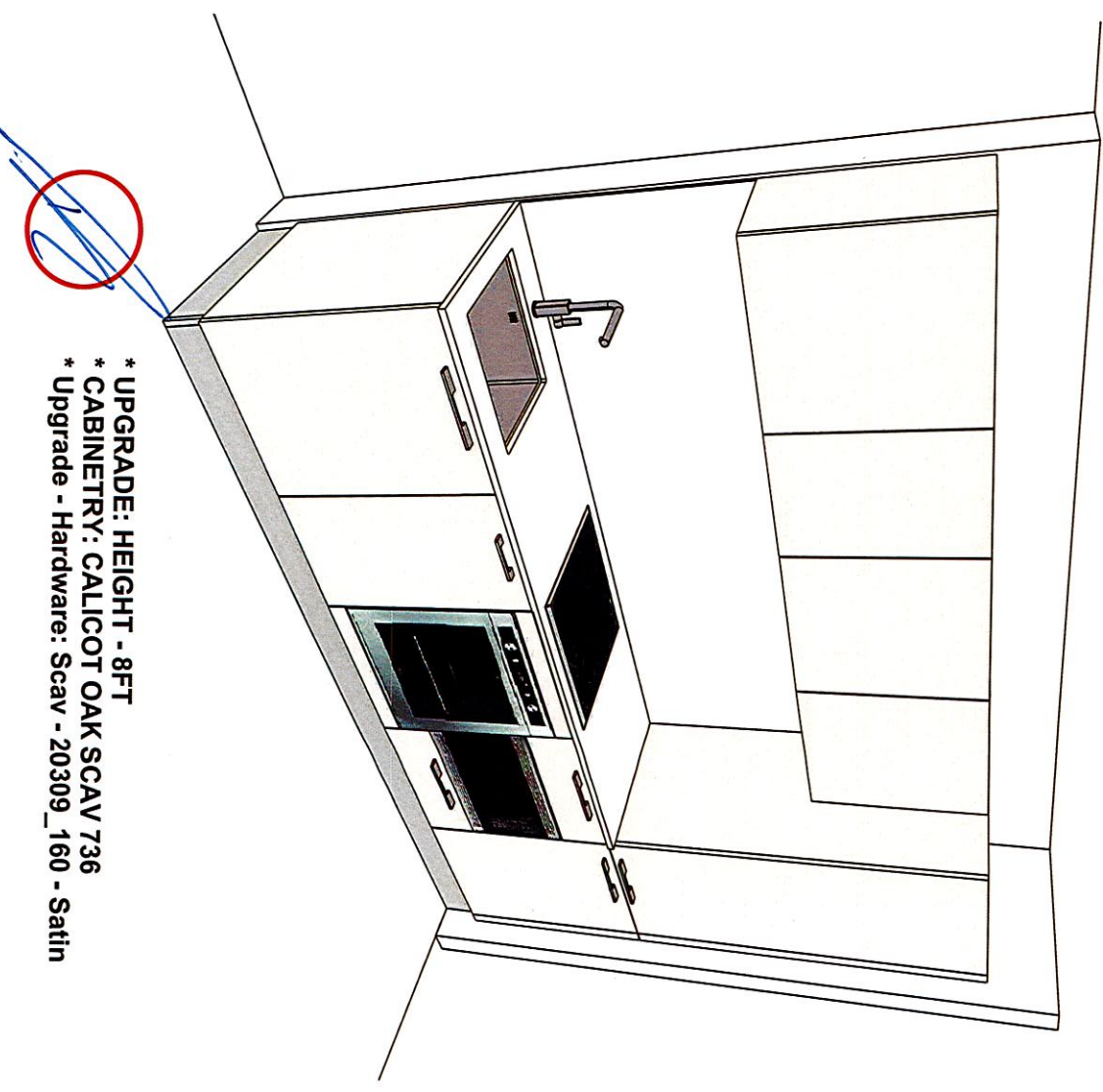
Purchaser

24" Appliance Package

CLOVER # 1210 / 1110 (C)



- | | | | | |
|---------------|------------------|------------------|------------------|------------------|
| 301 (Vintage) | 610 (Dragonfly) | 1410 (Dragonfly) | 2210 (Dragonfly) | 3010 (Dragonfly) |
| 303 (Vintage) | 710 (Dragonfly) | 1510 (Dragonfly) | 2310 (Dragonfly) | 3110 (Dragonfly) |
| 307 (Vintage) | 810 (Dragonfly) | 1610 (Dragonfly) | 2410 (Dragonfly) | 3210 (Dragonfly) |
| 309 (Vintage) | 910 (Dragonfly) | 1710 (Dragonfly) | 2510 (Dragonfly) | 3310 (Dragonfly) |
| 401 (Vintage) | 1010 (Dragonfly) | 1808 (Dragonfly) | 2610 (Dragonfly) | 3410 (Dragonfly) |
| 403 (Vintage) | 1110 (Dragonfly) | 1910 (Dragonfly) | 2710 (Dragonfly) | 3510 (Dragonfly) |
| 406 (Vintage) | 1210 (Dragonfly) | 2010 (Dragonfly) | 2810 (Dragonfly) | |
| 408 (Vintage) | 1310 (Dragonfly) | 2110 (Dragonfly) | 2910 (Dragonfly) | |



- * UPGRADE: HEIGHT - 8FT
- * CABINETRY: CALICOT OAK SCAV 736
- * Upgrade - Hardware: Scav - 20309_160 - Satin

The Clover on Yonge Inc. Cabinetry Checklist – Floors (3 - 40)

Purchaser: Ryan Millar

Suite: 1210

The following options have been discussed and I chose to:

KITCHEN CABINETRY HEIGHT

	Accept	Decline
STANDARD 7 FT HEIGHT	<input type="checkbox"/>	<input checked="" type="checkbox"/>
UPGRADED 8 FT HEIGHT	<input checked="" type="checkbox"/>	<input type="checkbox"/>

STANDARD KITCHEN CABINETRY

ASH PORE SCAV 014	<input type="checkbox"/>	<input checked="" type="checkbox"/>
ARCADE OAK SCAV 734	<input type="checkbox"/>	<input checked="" type="checkbox"/>
CALICOT OAK SCAV 736	<input checked="" type="checkbox"/>	<input type="checkbox"/>

UPGRADE KITCHEN CABINETRY – GLOSSY LACQUER 1

PRESTIGE WHITE LACQUER SCAV 028	<input type="checkbox"/>	<input checked="" type="checkbox"/>
DOVE LACQUER SCAV 855	<input type="checkbox"/>	<input checked="" type="checkbox"/>
MINK LACQUER SCAV 856	<input type="checkbox"/>	<input checked="" type="checkbox"/>
IRON GREY LACQUER SCAV 374	<input type="checkbox"/>	<input checked="" type="checkbox"/>

UPGRADE KITCHEN CABINETRY – GLOSSY LACQUER 2

LIGHT GREY SCAV 302 / TITANIUM GREY SCAV 358	<input type="checkbox"/>	<input checked="" type="checkbox"/>
TUNDRA GREY SCAV 358 / SLATE BLACK SCAV 424	<input type="checkbox"/>	<input checked="" type="checkbox"/>
OTHER: _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>

STANDARD BATHROOM VANITY CABINETRY

MATTE WHITE SCAV 024	<input type="checkbox"/>	<input checked="" type="checkbox"/>
MATTE GREY SCAV 859	<input type="checkbox"/>	<input checked="" type="checkbox"/>

UPGRADE BATHROOM VANITY CABINETRY – GLOSSY LACQUER 1

PRESTIGE WHITE LACQUER SCAV 028	<input type="checkbox"/>	<input checked="" type="checkbox"/>
DOVE LACQUER SCAV 855	<input type="checkbox"/>	<input checked="" type="checkbox"/>
MINK LACQUER SCAV 856	<input type="checkbox"/>	<input checked="" type="checkbox"/>
IRON GREY LACQUER SCAV 374	<input type="checkbox"/>	<input checked="" type="checkbox"/>
LIGHT GREY SCAV 302 / TITANIUM GREY SCAV 358	<input checked="" type="checkbox"/>	<input type="checkbox"/>
TUNDRA GREY SCAV 358 / SLATE BLACK SCAV 424	<input type="checkbox"/>	<input checked="" type="checkbox"/>

OTHER

	Accept	Decline
INTERGRATED APPLIANCE PANELS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
KITCHEN CABINETRY HARDWARE: <u>SCAV 20309_160 - UPGRADE</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
KITCHEN CABINETRY ACCESSORIES: _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>
BATHROOM VANITY HARDWARE: <u>SCAV 31610_160 - STANDARD</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BATHROOM VANITY ACCESSORIES: _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>
CUSTOM REQUESTS: <u>(AS PER NOTES ON COLOUR CHART)</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

SIGNATURES

Purchaser Signature: 

Date: May 23 , 2019

Purchaser Signature: _____

Date: _____

Purchaser Signature: _____

Date: _____

Purchaser Signature: _____

Date: _____

Décor Consultant Signature: 

Date: May 23 , 2019

The Clover on Yonge Inc. Colour Selection Checklist

Purchaser: Ryan Millar

Suite: 1210

The following options have been discussed and I chose to:

	Accept	Decline
Upgrade Kitchen Countertop/ Edge	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Upgrade Kitchen Backsplash	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Upgrade Kitchen Cabinetry	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Extend Kitchen Cabinetry	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mix and Match Cabinetry	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Upgrade / Add Kitchen Island	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Upgrade Kitchen - Accessories	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Upgraded Bathroom Vanity	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Upgrade Bathroom Countertop (Master / 2 nd)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Upgraded Bathroom Countertop Edge (Master / 2 nd)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Upgrade Tub/Shower Wall Tile (Master / 2 nd)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Upgrade Shower Floor Tile (Master / 2 nd) <i>BT</i>	<input checked="" type="checkbox"/>	
Upgrade Shower Threshold (Master / 2 nd)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Upgrade Bathroom Floor Tile (Master / 2 nd)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Upgrade Bathroom - Accessories (Master / 2 nd)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Upgrade Bathroom - Tub Shield (Master / 2 nd)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Upgrade Hardwood Flooring	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Upgrade Closet Sliders (Entry / Bedrooms) - MASTER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Custom Upgrades	<input checked="" type="checkbox"/>	<input type="checkbox"/>

***STANDARD PACKAGE MIX & MATCH**

The following items have been discussed and I understand:

- Sketches are to show design intent only and are subject to limitations due to site conditions and industry standards. Dimensions on sketches and plans are subject to change without notice.
- Colour of wood floors may vary from sample shown.
- Maintenance of natural stone countertops & flooring (if applicable), marble and limestone is susceptible to staining.
- Natural stone countertops & tiles may vary in colour and from sample shown.
- All selections, including all upgrades, are considered final upon the signing of this agreement. Should a purchaser(s) wish to make additional changes or add upgrades at a later date, the changes will be subject to a file re-opening fee of \$500.00 and will depend on the stage of construction.
- All standard backsplash tile is laid in brick pattern.
- All standard bathroom floor tile is laid in straight-lay pattern.
- All standard tub/shower wall tile is laid in straight-lay pattern.

Purchaser Signature: 

Date: May 23 , 2019

Purchaser Signature: _____

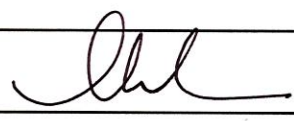
Date: _____

Purchaser Signature: _____

Date: _____

Purchaser Signature: _____

Date: _____

Décor Consultant Signature: 

Date: May 23 , 2019

**Addendum to Agreement of Purchase and Sale
Regarding Upgrades**

Between:

THE CLOVER ON YONGE INC.
(hereinafter called "Vendor")

-and-

Ryan Millar
(hereinafter called the "Purchaser(s)")

Whereas the Purchaser(s) has agreed to purchase from the Vendor

Suite 1210 (Level 11, Unit 10)

In accordance with an Agreement of Purchase & Sale dated 12/22/2015 and the request to modify certain specifications ("upgrades"),

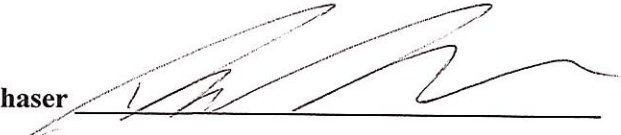

1. The Vendor's acceptance hereof hereby constitutes the Vendor's agreement to carry out the upgrades, as requested by the Purchaser and set out in the attached "Customer Invoice" and, if applicable, in any accompanying drawings.
2. Notwithstanding the Vendor's agreement to so carry out said upgrades, the Purchaser acknowledges that the Vendor's agreement hereto is subject to the following terms and conditions:
 - a) The cost(s) to the Purchaser of the upgrades will be as stated on the attached final version of the Customer Invoice, and as stated in paragraph no. 7 below. Said Customer Invoice shall be considered a final version only once it has been signed by the Vendor. In the event of a discrepancy between the Customer Invoice and this Addendum, the Vendor shall determine which is correct.
 - b) The Purchaser shall pay the cost(s) of the upgrades to the Vendor as specified in paragraph no. 8 below on or before the date specified. Failure to pay for said upgrades as agreed herein shall be deemed by the Vendor as a default under the Agreement, and in this event the Vendor shall be at liberty to complete the unit to basic project specifications as per Schedule "B" of the Agreement.
 - c) In addition to all other reasonable costs, additional charge(s) may be made for professional fees incurred by the Vendor from its architects, engineers, etc., for the purpose of incorporating the Purchaser's change(s); and
 - d) Any credit(s) issued to the Purchaser as a result of item(s) to be deleted, shall be based on credit(s) issued to the Vendor by the subcontractors/trades responsible for the item(s) so deleted, and in this regard the Purchaser acknowledges that said credit(s) are calculated on contract prices for the entire project and may be substantially less than retail prices normally charged for such items(s).
3. In the event that the purchase and sale transaction is not completed for any reason all monies paid for upgrades will not be refunded.
4. If, as a result of building, construction or site conditions within the Unit or Building, the Vendor is not able to construct an electrical or structural upgrade, then the Vendor may terminate the Vendor's obligation to construct the extra. In such event, the Vendor shall refund to the Purchaser the monies, if any, paid by the Purchaser to the Vendor in respect of such extra, without interest and in all other respects this Agreement shall continue in full force and effect.
5. If any of the upgrades ordered by the Purchaser remain incomplete in whole or in part on the Closing Date, the Vendor may provide an undertaking to complete the upgrades within a reasonable period of time which the Purchaser shall accept without any holdback; or not provide the upgrades or not complete the upgrades in its sole discretion whereupon the Vendor shall refund to the Purchaser by an adjustment on the Unit Transfer Date that portion of the amount paid by the Purchaser as allocated to the upgrades which were not provided or remain incomplete as determined by the Vendor, which credit shall be accepted by the Purchaser as full and final settlement of any claim the Purchaser may have with respect to the upgrades which were not provided or are incomplete.
6. The Purchaser acknowledges that construction and/or installation of any specified upgrades may result in delays in the completion of construction of the Unit due to availability of services, materials and/or supplies. The Purchaser covenants and agrees to complete the Agreement notwithstanding that the Unit may not be completed in accordance with the terms and provisions of the Agreement as a result of such delays.
7. The Purchaser acknowledges that natural stones and wood are subject to natural variations in colour and grain. Tile is subject to dye lot, pattern, shade and colour variations

8. The Purchaser hereby agrees to purchase upgrades outlined in the attached "Customer Invoice" as follows:

Electrical Upgrades:

Order Total as per Customer Invoice:	\$ <u>2,552.67</u>
Credit to Purchaser (if applicable):	\$ <u>0</u>
Amount Owing (date: _____)	\$ <u>2,552.67</u>
Total Paid:	\$ _____
Electrical Outstanding:	\$ _____

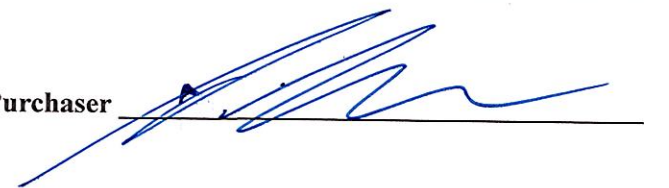
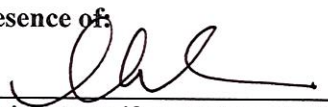
Dated at TORONTO, Ontario, this 15 day of JUNE, 2018

SIGNED, SEALED AND DELIVERED
in the presence of: _____)
Purchaser )
Witness )
(as to all signatures if more than one Purchaser))
Purchaser _____)

Colour Selection Upgrades:

Order Total as per Customer Invoice:	\$ <u>5,463.55</u>
Credit to Purchaser (if applicable):	\$ <u>0</u>
Amount Owing (date: _____)	\$ <u>5,463.55</u>
Total Paid:	\$ _____
Colours Outstanding:	\$ _____
Balance payable on Occupancy (if applicable):	\$ _____

Dated at TORONTO, Ontario, this 23 day of MAY, 2019

SIGNED, SEALED AND DELIVERED
in the presence of: _____)
Purchaser )
Witness )
(as to all signatures if more than one Purchaser))
Purchaser _____)

Dated at Toronto, this _____ day of _____, 20____

THE CLOVER ON YONGE INC.

Per: _____
Name: _____
Title: Authorized Signing Officer
I have authority to bind the corporation

Appendix 4

AGREEMENT OF PURCHASE AND SALE

The undersigned, **Ryan Miller** (collectively, the "Purchaser"), hereby agrees with **33 YORKVILLE RESIDENCES INC.** (the "Vendor") to purchase Unit No. **21** Level No. **12**, Suite No. **1211B**, as outlined for identification purposes on the draft plan of condominium attached hereto as Schedule "A", being a proposed unit in the Condominium to be located at 33 Yorkville Avenue, Toronto together with an undivided interest in the common elements appurtenant to the unit and the exclusive use of those parts of the common elements attached to such unit, if any, as set out in the proposed Declaration (hereinafter collectively called the "Unit") on the following terms and conditions:

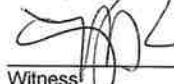
- The purchase price of the Unit (the "Purchase Price") is **Five Hundred Ninety Two Thousand Nine Hundred (\$ 592,900.00)** DOLLARS (as more particularly set forth and subject to the provisions of Subsection 7(d) of this Agreement) of lawful money of Canada payable as follows:
 - to Bennett Jones LLP, In Trust (the "Escrow Agent" or the "Vendor's Solicitors"), in the following amounts at the following times, by cheque or bank draft, as deposits pending completion or other termination of this Agreement and to be credited on account of the Purchase Price on the Closing Date:
 - the sum of **Twenty Five Thousand (\$25,000.00) DOLLARS** accompanying this Agreement as an initial deposit;
 - the sum of **Thirty Four Thousand Two Hundred Ninety (\$ 34,290.00) DOLLARS** submitted with this Agreement and post-dated sixty (60) days after the date of execution of this Agreement by the Purchaser;
 - the sum of **Twenty Nine Thousand Six Hundred Forty Five (\$ 29,645.00) DOLLARS** submitted with this Agreement and post-dated one hundred and eighty (180) days after the date of execution of this Agreement by the Purchaser;
 - the sum of **Twenty Nine Thousand Six Hundred Forty Five (\$ 29,645.00) DOLLARS** submitted with this Agreement and post-dated two hundred and forty (240) days after the date of execution of this Agreement by the Purchaser;
 - the sum of **Twenty Nine Thousand Six Hundred Forty Five (\$ 29,645.00) DOLLARS** as a further deposit by way of bank draft or certified solicitor's trust cheque, in either case, issued by a Schedule 1 Canadian Chartered Bank on the Occupancy Closing Date (as hereinafter defined).
 - The balance of the Purchase Price subject to the adjustments hereinafter set out, by way of bank draft or certified solicitor's trust cheque, in either case, issued by a Schedule 1 Canadian Chartered Bank payable to the Vendor's Solicitors, In Trust, on the Unit Transfer Date.
- The amounts payable pursuant to clauses 1(a)(i) to (v), both inclusive, are hereinafter referred to as the "Deposit" or "Deposits", as the case may be. All Deposits shall be credited towards the Purchase Price on the Unit Transfer Date. The Purchaser shall deliver post-dated cheques for the amounts set out in clauses 1(a)(i) to (iv) upon execution of this Agreement. The Deposits may be released by the Escrow Agent to the Vendor in accordance with Section 6 of this Agreement.
- In accordance with Section 73 of the Act, any purchaser, before receiving delivery of a Transfer of his Unit, may rescind the Agreement of Purchase and Sale within ten (10) days of the later of the date of receipt by the Purchaser of the Disclosure Statement and the date of receipt by the Purchaser of a copy of the Agreement of Purchase and Sale executed by the Purchaser and the Vendor.

The Purchaser hereby acknowledges that the acceptance of this offer by the Vendor is irrevocable by the Purchaser until 6:00 p.m. on the 15th day after the date of execution by the Purchaser, after which time, if not accepted, this offer shall be null and void and the deposit referred to in paragraph 1(a) above shall be returned to the Purchaser without interest or deduction. When accepted, this offer shall constitute a binding agreement of purchase and sale wherein time shall in all respects be of the essence. The parties acknowledge and agree that acceptance of this offer shall be conclusively deemed to have been made if this Agreement is executed by the Vendor and made available for pick up by the Purchaser at the Vendor's sales office on or before the irrevocable date herein set forth, without requiring that notice of acceptance or a fully executed counterpart of this Agreement be delivered to the Purchaser.

All provisions of this Agreement, including Sections 4 to 57, both inclusive, contained on the following pages and those set out in Schedules "A", "B", "C" and "D" to this Agreement, the Tarion Addendum to Agreement of Purchase and Sale, together with the appendix thereto containing Additional Early Termination Conditions and the Tarion Statement of Critical Dates which are attached hereto are an integral part hereof. The Purchaser acknowledges that he/she has read all provisions and schedules of this Agreement, the Tarion Addendum to Agreement of Purchase and Sale together with the appendix thereto and the Tarion Statement of Critical Dates and agrees to be bound by each of them.

DATED at Toronto, this 29 day of May, 2018.

SIGNED, SEALED AND DELIVERED
 in the presence of


 Witness
 (as to all signatures if more than one Purchaser)


 PURCHASER
 Print Name: Ryan Miller
 Date of Birth: _____ S.I.N. _____
 Driver's License: _____

 PURCHASER
 Print Name: _____
 Date of Birth: _____ S.I.N. _____
 Driver's License: _____

PURCHASER'S ADDRESS

Suite No. _____ Street Name _____
 City _____ Province _____ Postal Code _____
 Telephone (Bus.) _____ Telephone (Home) _____
 Facsimile _____ e-mail _____

PURCHASER'S SOLICITOR

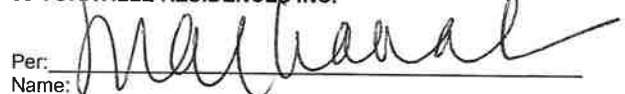
Name _____
 Suite No. _____ Street Name _____
 City _____ Province _____ Postal Code _____
 Telephone _____ Facsimile _____

The undersigned accepts the above offer and agrees to complete this transaction in accordance with the terms hereof.

DATED at Toronto, this 29 day of May, 2018.

Vendor's Solicitors
BENNETT JONES LLP
 One First Canadian Place
 Suite 3400, 100 King Street West
 Toronto, Ontario, M5X 1A4
 Attention: Leonard Gangbar
 Telephone: (416) 777-7478
 Facsimile: (416) 863-1716
 e-mail: gangbarl@bennettjones.com

33 YORKVILLE RESIDENCES INC.


 Per: _____
 Name: _____
 Title: Authorized Signing Officer
 I have the authority to bind the Corporation

Appendix 5

THIS AGREEMENT, made as of the 29th day of November 2018

Between:

Cresford Developments

(the "Employer")

-and-

Ryan Millar

(the "Employee")

This agreement amends the previous employment agreement dated November 5th, 2014 governing the terms and conditions of employment. For clarity all terms and conditions outlined and agreed to in the November 5th, 2014 agreement remain unchanged with exception of the following:

ma

The salary of the Employee will be \$300,000.00 per annum, payable bi-weekly less applicable statutory deductions. For clarity the salary of the employee will no longer increase 3% per annum.

ma

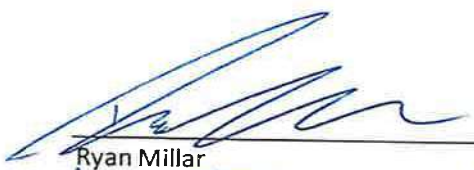
The Employer will pay the Employee a monthly vehicle allowance of \$600.00 subject to the same terms as outlined in the November 5th, 2014 agreement.

ma

The Employee will receive a bonus on each development project based as outlined in the revised "schedule B" of this amending agreement.

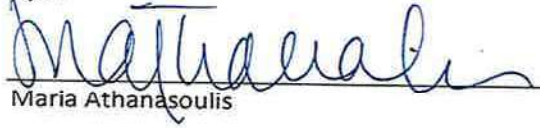
ma

For clarity should the employee terminate his employment as outlined in the November 5th, 2014 agreement in condition #1 the employee would not be eligible for any of the bonuses outlined in the amending schedule B revised November 29th, 2018 if not yet due.



Ryan Millar

December 10th, 2018
Date



Maria Athanasoulis

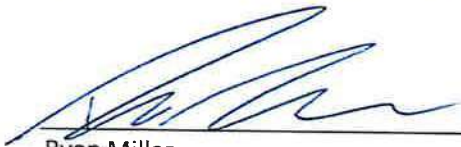
December 10, 2018
Date

Amending Schedule B

(Revised November 29th, 2018)

The bonus earned, provided the employee is employed by the employer at the time the money is deemed due shall be;

1. The Employer agrees to a \$200,000.00 bonus to be paid within 60 days after the final registration of the declaration on any new developments announced after todays date being November 29th, 2018 (inclusive of the \$100,000.00 bonus previously agreed to on November 5th, 2014).
2. The Employer agrees to a credit of \$350,000.00 to be applied towards the purchase of a Cresford condominium unit at 33 Yorkville (In addition to the \$200,000.00 credit previously agreed to on November 5th, 2014 to go towards a unit at Clover). For clarity the total bonus payable towards the purchase of Cresford condominium unit(s) will be \$550,000.00.
3. \$100,000 due 60 days after final registration of the declaration of The Clover on Yonge Condominiums (As agreed to on November 5th, 2014).
4. \$100,000 due 60 days after final registration of the declaration of Halo Condominiums. (As agreed to on November 5th, 2014).
5. \$100,000 due 60 days after final registration of the declaration of The Yorkville condominiums (As agreed to on November 5th, 2014).
6. \$83,333.33 due 30 days after the zoning bylaw has been enacted by City Council and appeal period has expired, \$83,333.33 due 30 days after receipt of the above grade structural building permit has been issued by the Building Department and \$83,333.33 due 60 days after the final registration of the declaration of YSL Condominiums (As agreed to on July 8th, 2016).



Ryan Millar

Nov 29th, 2018

Date



Maria Athanasoulis

Dec. 10, 2018

Date

Appendix 6

Ryan Millar

From: Ted Dowbiggin
Sent: March 24, 2020 8:37 PM
To: Ryan Millar
Cc: Dave Mann; Dan Casey
Subject: Re: Ryan

Hi Ryan as promised when the time is right I will be speaking to concord right now everyone is busy with finalizing due diligence.

Sent from my iPhone

On Mar 24, 2020, at 8:28 PM, Ryan Millar <rmillar@cresford.com> wrote:

Hello Dave,

Appreciated and understood. Yes and update on everything would also be appreciated as are Teds efforts on the Clover unit from my agreement so any news on that front will be most welcome.

Thanks

Ryan Millar
Cresford Developments
Vice President of Planning and Development
T: 416-971-7557 | C: 416-230-0648
E: rmillar@cresford.com
59 Hayden Street, Suite 200 | Toronto, ON | M4Y 0E7
www.cresford.com

From: Dave Mann <dmann@cresford.com>
Sent: March 24, 2020 4:47 PM
To: Ryan Millar <rmillar@cresford.com>
Cc: Ted Dowbiggin <tdowbiggin@cresford.com>; Dan Casey <dcasey@cresford.com>
Subject: RE: Ryan

Hi Ryan,

I'm speaking on behalf of all of us that we are very grateful and appreciative for all the hard work you have put in to get us through these difficult times. I have spoken to Dan and Ted and we will honour the bonuses agreed to. The \$83,333 for YSL will be included in the April 15th payroll. We will address the \$175,000 in the next few months when we get our projects sorted out with the Banks and/or prospective purchasers. Regarding your unit purchases, Ted is dealing with Concord on Clover and we hope to keep that deal alive for you. We will have to see how things work out with 33 Yorkville to see what can be done. We will keep you up to date on everything going on and ensure you are looked after.

Thanks

From: Ryan Millar

Sent: March 24, 2020 9:28 AM

To: Dave Mann <dmann@cresford.com>; Ted Dowbiggin <tdowbiggin@cresford.com>; Dan Casey <dcasey@cresford.com>

Subject: Re: Ryan

Hello Everyone,

Would like a response to this and to the similar one I believe Marco and Louie had forwarded to you please.

Having replied to all of concords questions to date many which were answered during evenings and weekends in the middle of all that is going on and see they have more today and sure more in the coming days which can be expected from complex projects like these. In order to answer the ones from last night I will need to come in again to provide the attachments in an attempt to show positive results to their concerns which I am hoping will satisfy them and limit future questions.

I have been doing so against the wishes of my wife and family to date so think a response to our reasonable questions is warranted

When you have a moment please

Ryan

Sent from my iPhone

On Mar 22, 2020, at 2:51 PM, Ryan Millar <rmillar@cresford.com> wrote:

Hello Dave, Ted and
Dan,

I am pleased that there is news of a potential agreement that will assist you all in dealing with the issues at hand and as always I am happy to assist in satisfying requirements and conditions as I am sure you have seen me doing at all hours. I also understand and appreciate that you have all confirmed that my unit at clover, promised and secured in my employment agreement and signed

aps(s) will be honored, but based on the timing and all that is happening I am hoping for further and more specific assurances on the following additional items for peace of mind as we continue forward:

1. Past due Bonuses
2. Bonuses outlined in my employment agreements
3. Bonus Incentive of \$175,000 for staying on to help through this pivotal and stressful period.
4. 33 Yorkville Unit, Discounted Unit based on signed APS and employment agreement vs. Cash equivalent of future value of unit with credits
5. Severance Package
6. Clover unit honoring of aps with credits as further agreed to and outlined in my employment agreement with the purchase price as noted.

I have and continue to be committed in helping and assisting you throughout this transitional period; but now with a potential deal or any deal in hand i need to be reassured that my outstanding issues will be addressed and taken care of in writing

as I believe that these matters are with you.

As you all know I have been with cresford since 2001 with the exception of a period from 2012-2015 at which point I was asked to come back from a comparable position to assist and resolve issues to which I agreed based on the signed employment agreements and I believe I have done the best of my abilities to come through over the years with much success.

Please let me know if you need anything further from me in regards to this such as my two signed employment agreements, two executed aps agreements or anything further that you can think of. Thank you and please let me know.

Ryan

Sent from my iPhone

On Mar 22, 2020, at 12:05 PM, Ryan Millar <rmillar@cresford.com> wrote:

Hello Dave,

See below. I attached the invoices for the halo and clover permits to my email last night so those should be readily available. Those are also

outstanding invoices so I wasn't sure about adding them at all but needed for site so included out of an abundance of caution.

See below, when I indicate divide by 3 I mean spread the total out across April, May and June equally. All other items I have provided the month beside each item.

Ryan

Sent from my iPhone

On Mar 22, 2020, at 11:23 AM, Dave Mann
<DMann@cresford.com> wrote:

Hi Ryan,

Sorry to bug you but I need to put in approximate dates for these costs and only those that will be incurred after March 27th and before June 26th. Can you enter the month you think they might arise?

Also for the City permits, I think you put in the Clover numbers in Halo and vice versa.

Thx

From: Ryan Millar
Sent: March 21, 2020 9:31 PM
To: Dave Mann <dmann@cresford.com>
Cc: Ted Dowbiggin <tdowbiggin@cresford.com>; Louie Giannakopoulos <lgiannakopoulos@cresbuild.com>; Marco Mancuso <marco@cresbuild.com>
Subject: RE: Construction

Hello Dave,

As requested below is a list of "estimated" costs associated with consultant works required and municipal fees for the Halo and Clover projects I am projecting for Halo and Clover from the end of March to end of June 2020.

Please note this is assuming A) outstanding accounts for consultants will be paid or I am not sure they will all be willing to do any further work B) that the consultants don't ask for "retainers" prior to proceeding with work as that is not taken into account for the amounts below C) the amounts below do not include already past due amounts owed to consultants:

Marco/ Louie to avoid you having to read all of below there are a couple areas that aren't really mine I highlighted in yellow if you could have a look.

Halo

- Toronto Water Discharge fees to City **\$1,500.00 (Divide by 3)**
- Petra vibration control monitoring **\$10,000 (divide by 3)** as required by heritage, City and TTC
- Reprodux **\$5,000** for plans and prints (divide by 3)
- Just an estimate as I don't really need the consultants, but construction might so **\$20,000** aA, **\$20,000** Pat Lam, **\$5,000** Masong Song, **\$5,000** Ferris and Associates and would put R Avis in for **\$10,000 (divide by 3)**
- Keen Eye **\$3,000** to go into the Yonge Street subway tunnel and complete a post condition survey to confirm we did not cause any damage to the tunnel. This required to get our TTC LC back (estimated to be incurred in June)
- Guys on site are asking for a crane/ safety platform agreement with the owners to the south of the site. I have started that discussion and would earmark **\$20-\$60,000** in compensation for this. Naturally trying to get it for free, but that rarely works. (Estimated to be incurred in May)
- We still need pay the City for staging, crane swing and graphics permits for the City which have been expired since January 2020 so we are currently working without those permits. I have attached those invoices again here **\$116,611, \$21,594 and \$5,769 (estimated incurred March)**
- As per the section 37 and Section 111 agreements the payments made to the rental replacement tenants will expire June 1st (one guy claiming April 1st) and therefore as per the agreement they need to get 6 month rent gap payments until they move back in at first occupancy. I have attached the excel chart here and back of the napkin I a thinking that is around **\$40,580.00** for 6 months due to be in their hands June 1st (possibly April 1st for the one guy Robert Clem) (estimated incurred in June and one guy in April)
- I believe the guys on site had hoped to install their permanent staging hoarding and that will require a road occupancy permit to install off of

a lane on Yonge Street for a week. Estimating that will be **\$5,000 +/- (estimated to be incurred in May)**

- I believe the plan was to bring in the services to the site this summer. I had gone through the City tender process in February 2018, but the site was not ready so this price has since expired and will need to be tendered again so I would assume it will be more? Was \$177,000 so perhaps assume **\$200,000? (Estimated to be incurred in June)**
- **Isherwood monitoring devices in the TTC subway tunnel which they monitor monthly. Marco do you know this monthly cost? I don't seem to get these invoices. (Divide by 3 see Marco email for total)**
- **Not a planning thing, but I know the guys are trying to get a Toronto Hydro offer to connect to be able get power to the site on time. I have no idea what that cost will be or the LC requirement, but they are usually not cheap (estimated to be incurred in May)**

Sub-total \$529,054.00 (see above for month by month breakout)

Clover

- Toronto Water Discharge fees to City **\$1,500.00 (divide by 3)**
- Reprodux **\$5,000** for plans and prints (divide by 3)
- Settle up plans examination fees with the building department prior to receiving final building permit **\$20,000 - \$60,000** (this is because we pay the permit fee to the City based on our architects calculation at application several years ago. Prior to final permit the City double checks that number and we pay the difference) (estimated to be incurred in April)
- Architect (aA) **\$20,000 - \$30,000** for work required to obtain both final building permit and work required to obtain amending site plan agreement to incorporate changes to the building made by Cresford. (Estimated to be incurred in April)
- Landscape Architect (Janet Rosenberg) **\$20,000 - \$30,000** required to complete the SPA amending agreement with the City and also to continue monitoring and processing payments from the City to complete the James Canning

Park which the Community and the Councillor will be expecting to be complete by June. They will also need to revise their streetscaping permit plans for submission to the City (divide by 3)

- Novatrend **\$5,000** to complete their works to amend the already issued but slightly out of date plumbing and HVAC permits for the building (estimated to be incurred in April)
- Underhill & Associates **\$5,000** to complete the work required to amend the site plan agreement as well as to review and approve the servicing work done by Vipe which is required for occupancy and registration as well as to get the very large LC back from the City (estimated to be incurred in April)
- I do not know the numbers owed to them and this is not a City thing, but you will also need to pay Aldershot to complete the park (divide by 3)
- I do not know the numbers for this either, but we need to finish the water proofing on the TTC pedestrian tunnel which I believe the guys on site were planning to do when the site thaws out (divide by 3)
- Jensen Hughes (OBC consultant) **\$5,000- \$10,000** for work required to obtain final building permit (estimated to be incurred in April)
- Road occupancy permit for 1 month to close Dundonald and allow the guys to finish the tunnel **\$18,000 (estimated to be incurred in May)**
- Keen Eye **\$3,000** to go into the Yonge Street subway tunnel and complete a post condition survey to confirm we did not cause any damage to the tunnel with our park or excavation work. This required to get our TTC LC back once the guys finish working on the waterproofing (estimated to be incurred in June)
- I am trying to avoid this, but the City may be looking for an SPA amendment fee of **\$20,000 +/-** once we are ready to finalize (estimated to be incurred in May)
- Dale and Lessmann **\$20,000** for work required to continue with required shared facility agreement, TTC easement agreement and Limiting Distance Agreement (estimated to be incurred in April)
- Aird and Berlis **\$5,000** to assist with the severance process at 11 Gloucester (estimated to be incurred in May)

- R Avis **\$10,000** for work required to proceed with the Limiting Distance Agreement, shared facility agreement and TTC Easement Agreement (estimated to be incurred in April)
- Please keep in mind you will need to **pay the taxes** in order for use to be able to A) complete the severance at 11 Gloucester and B) to register the Limiting Distance Agreement for 7 & 9 Gloucester on title. I do not know what will be owed by April/ May when we hope to do that, but assume you do. This is needed to get a final Building Permit (estimated to be incurred in April)
- ERA **\$5,000** to continue to complete the work required to amend our building permits for 7, 9 & 11 Gloucester to allow for the construction of the residential units as designed by Michael London (interior) (estimated to be incurred in May)
- We still need pay the City for staging, crane swing and graphics permits for the City which have been expired since January 2020 so we are currently working without those permits. I have attached those invoices again here **\$240,106** and **\$10,747 (estimated to be incurred in March)**

Sub-total \$478,353.00 (see above for month by month breakout)

69 Hayden Park (I don't know which of the projects above to attribute these costs as the option benefits both so gave this its own section)

- City Council is currently suspended but hopefully back on before June and once they approved the term sheet for 69 Hayden they will be looking for
 - An LC for **\$8,580,000** to secure the land until it is formally turned over once the "base park" work is complete so that an LC could be April/ May/ June (most likely June due to suspended council)
 - An LC for **\$175,000** to secure the base park work until it is complete (most likely June due to suspended council)
 - Once the base park work is complete and we transfer the lands they will release the big LC above, but will then be looking for a cheque **for \$5,255,300.00** once they receive that they will clear the Halo and Clover

Building permits allowing occupancy/
registration (most likely June due to
suspended council)

- We will need consultants to be able to complete base park work (conservative estimates) (divide all by 3)
 - Odan Detech Civil **\$5,000**
 - JRS landscape **\$2,000**
 - Pat Lam **\$2,000**
 - R Avis **\$2,000**
 - Dale and Lessmann **\$5,000**
 - Conestoga Environmental **\$10,000**
- We will need physical construction work to complete base park (conservative estimates) assume May for all below.
 - City to bring services to site **\$50,000**
 - Hydro pole, cabinet and ESA clearance **\$20,000**
 - Hydro to bring line over **\$5,000**

Sub-total **\$5,356,300 + \$8,755,000 LC (see above for month by month breakout)**

Grand-total **\$6,363,707.00 + \$8,755,000 LC (see above for month by month breakout)**

Thanks,

Ryan Millar
Cresford Developments
Vice President of Planning and Development
T: 416-971-7557 | C: 416-230-0648
E: rmillar@cresford.com
59 Hayden Street, Suite 200 | Toronto, ON | M4Y 0E7
www.cresford.com

On Mar 21, 2020, at 9:56 AM, Dave Mann <DMann@cresford.com> wrote:

Hi Ryan,

I meant to send this to you as well. See below.

Can you put together a list of consultant/planning/City costs that will be billed in the relevant period? E&Y will be getting a separate A/P list from us so ignore those costs that have already been incurred.

Let me know if you have any questions.

Thx

From: Dave Mann
Sent: March 21, 2020 9:46 AM
To: Louie Giannakopoulos
<lgiannakopoulos@cresbuild.com>;
Marco Mancuso
<marco@cresbuild.com>
Cc: Ted Dowbiggin
<tdowbiggin@cresford.com>; Dan
Casey <dcasey@cresford.com>
Subject: Construction

Hi guys,

We are gearing up towards a firm deal with Concord on Clover and Halo which will involve a CCAA proceeding instead of receivership. This is good because PWC will be out of the picture and Concord in control. If you get any questions from PWC, please forward those requests to me. We will deal with them.

Concord has appointed a monitor who will be putting together a package for the courts this week. We may be putting them in touch with you so please give them everything they need.

I have to put together a cash flow for each of the two projects for a 13 week period beginning March 27th. Over the weekend, can you put together an estimate of the construction work that will be undertaken and billed for April, May and June? Please break the numbers down by Division and trades if possible.

Let me know if you have any questions.

Thanks

Appendix 7

SENT VIA EMAIL: dcasey@cesford.com
dmann@cesford.com
tdowbiggin@cesford.com
jbolla@cesford.com

July 16th, 2020

Dan Casey
Cresford Developments
59 Hayden Street, Suite 200
Toronto, Ontario
M4Y0E7

Re: Ryan Millar – Constructive Dismissal

Dear Dan,

As you are aware, I have not yet been paid my bonus of \$83,333.33 due November 4, 2019 in respect of the YSL project. I have also learned that Cresford does not plan to honour the credits against unit purchases to which I am contractually entitled under my employment agreements dated November 5, 2014 and November 29, 2018 (enclosed for ease of reference).

I have been given multiple assurances and personal commitments both in writing and orally that my YSL bonus would be paid and that Cresford would present me with an offer that fairly compensates any lost unit credits – which have appreciated considerably in value. Numerous promised delivery dates for such payment and offers have come and gone, including May 21st, 24th, 26th, 28th June 12th and June 22nd.

I am not prepared to wait any longer. It is clear to me that the terms of my employment agreements are not being honoured while I am being asked to continue to complete work on behalf of Cresford and its directors and agents, and that continuing to work for Cresford will only cause me to continue to incur further losses.

I will therefore consider myself constructively dismissed should my outstanding bonus not be paid, and satisfactory commitments received in respect of my unit credits (that recognize their appreciated value) by this Friday, July 24, 2020 at 5:00 pm, effective at that time.

I also require confirmation by this time that my future bonuses will be paid if and as accrued, namely:

- \$100,000 cash bonuses payable 60 days after registration of the final declarations for each of Clover, Halo, and Yorkville
- \$166,666.66 cash bonus payable on achieving the milestones on YSL
- The remaining \$175,000 of my retention bonus payable if I remain with Cresford until January 2021

I remind you of the payments to which I am entitled upon termination pursuant to my November 5, 2014 employment agreement.

Yours Truly,

Ryan Millar

A handwritten signature in black ink, appearing to read 'Ryan Millar', with a long horizontal flourish extending to the right.

Appendix 8

File No.: 10333

July 17, 2020

BY EMAIL

AIRD & BERLIS LLP
Barristers & Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON. M5J 2T9

Steven L. Graff
Ian Aversa
Jeremy Nemers
Jonathan Yantzi

Lawyers for the Clover CCAA Applicants

BENNETT JONES LLP
2500 Park Place, 666 Burrard Street
Vancouver, BC V6C 2X8

David Gruber

Co-counsel for the Clover CCAA Applicants

Dear Counsel:

**Re: The Clover on Yonge Inc. and The Clover on Yonge Limited Partnership re
David Ryan Millar**

We act for David Ryan Millar, Cresford's Vice President of Planning and Development.

Pursuant to his November 5, 2014 employment agreement, Mr. Millar was granted a \$200,000 credit against the purchase price of a unit in any Cresford development (the "**2014 Credit Bonus**"). Cresford and Mr. Millar negotiated the 2014 Credit Bonus as a form of signing/incentive bonus for his return to Cresford after his having left to work for a different employer years earlier. Mr. Millar and Cresford allocated that credit to his purchase of Unit 1210 in the Clover development. Because of the market appreciation of that unit since, the value of the 2014 Credit Bonus has increased significantly.

We have reviewed your client's motion record for its motion to file a plan of arrangement and for related meeting terms. While it is clear from these materials that Cresford intends to disclaim all Clover unit purchases including Mr. Millar's, it is not clear how Cresford's proposed plan of arrangement would address the 2014 Credit Bonus. As vested compensation for past services, it should not be reduced from its current value. Is Cresford prepared to provide Mr. Millar an election between (a) applying an appreciation-adjusted credit if he elects to complete his purchase on the proposed terms following

NAYMARK LAW

disclaimer, and (b) receiving an equivalent cash payment in lieu of the credit if he elects not to purchase at the higher price? If not, what is Cresford's proposal for dealing with the 2014 Credit Bonus should its proposed plan of arrangement be approved and sanctioned?

Depending on Cresford's response, Mr. Millar may oppose Cresford's motion and/or its proposed plan. We will not be participating in this afternoon's scheduling call.

Yours truly,

A handwritten signature in blue ink, appearing to read 'DN', is positioned above the printed name.

Daniel Naymark

DN/sp

Appendix 9



Bennett Jones

Bennett Jones LLP
2500 Park Place
666 Burrard Street
Vancouver, British Columbia, V6C 2X8 Canada
T: 604.891.7500
F: 604.891.5100

David E. Gruber
Partner
Direct Line: 604.891.5150
e-mail: gruberd@bennettjones.com

July 20, 2020

Via Email: dnaymark@naymarklaw.com

Naymark Law
171 John Street, Suite 101
Toronto, ON M5T 1X3
Attention: Daniel Naymark

Dear Mr. Naymark

Re: The Clover on Yonge Inc. and The Clover on Yonge Limited Partnership re David Ryan Millar

I write in answer to your letter dated July 17, 2020. As a point of clarification, as is outlined in the materials filed in this CCAA proceeding by the Applicants, the Applicants are no longer controlled or owned by the Cresford group of companies.

I can advise that the Plan of Compromise and Arrangement (the "**Plan**") of the Applicants does not purport by its terms, nor is it intended to, compromise any claims Mr. Millar may have against his employer, Cresford, relating to the 2014 Credit Bonus or otherwise.

We understand Mr. Millar's contractual dealings with The Clover on Yonge Inc. are solely governed by the Agreement of Purchase and Sale for Unit 1210 (the "**Unit 1210 Contract**"). Pursuant to the terms of the Plan, Mr. Millar, as a Pre-Sale Purchaser (as defined in the Plan), would have the same election under the Plan as all other Pre-Sale Purchasers. To the extent that Mr. Millar may have suffered a compensable loss as a result of the disclaimer by the Applicants of the Unit 1210 Contract in respect of his contract of employment, we presume that Mr. Millar is at liberty to claim the amount of such alleged loss from his employer, Cresford.

Yours truly,

David E. Gruber

cc: Steven L. Graff, Ian Aversa, Jeremy Nemers and Jonathan Yantzi, Aird & Berlis LL

Appendix 10



Electronically issued : 04-Aug-2020
Délivré par voie électronique : 04-Aug-2020
Toronto

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

DAVID RYAN MILLAR

Plaintiff

- and -

**CRESFORD (ROSEDALE) DEVELOPMENTS INC., EAST DOWNTOWN
REDEVELOPMENT PARTNERSHIP, YSL RESIDENCES INC., YG LIMITED
PARTNERSHIP, 9615334 CANADA INC., 50 CHARLES STREET LIMITED, 69
HAYDEN STREET LIMITED, 11 GLOUCESTER STREET INC., CRESFORD
HOLDINGS LTD. and DANIEL C. CASEY**

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff.
The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$5,000 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for costs and have the costs assessed by the court.

Date: August 4, 2020

Issued by: _____
Local Registrar
Ontario Superior Court of Justice
330 University Avenue, Toronto, ON, M5G 1R8

TO: CRESFORD (ROSEDALE) DEVELOPMENTS INC.
59 Hayden Street, 2nd Floor
Toronto, ON M4Y 0E7

EAST DOWNTOWN REDEVELOPMENT PARTNERSHIP
59 Hayden Street
2nd Floor
Toronto, ON M4Y 0E7

YSL RESIDENCES INC.
59 Hayden Street
2nd Floor
Toronto, ON M4Y 0E7

YG LIMITED PARTNERSHIP
59 Hayden Street
2nd Floor
Toronto, ON M4Y 0E7

9615334 CANADA INC.
59 Hayden Street
2nd Floor
Toronto, ON M4Y 0E7

50 CHARLES STREET LIMITED
59 Hayden Street
2nd Floor
Toronto, ON M4Y 0E7

69 HAYDEN STREET LIMITED
59 Hayden Street
2nd Floor
Toronto, ON M4Y 0E7

11 GLOUCESTER STREET INC.
59 Hayden Street
2nd Floor
Toronto, ON M4Y 0E7

CRESFORD HOLDINGS LTD.
59 Hayden Street
2nd Floor
Toronto, ON M4Y 0E7

DANIEL C. CASEY
141 Riverview Drive
Toronto, ON, M4N 3C3

CLAIM

1. The plaintiff, David Ryan Millar (**Millar**), claims against the defendants (together, the **Cresford Defendants**):

(a) as against the corporate defendants (defined below as Cresford):

(i) damages for breach of contract, oppression, and wrongful dismissal in the amount of \$3,000,000;

(ii) a declaration that Cresford is liable for any bonuses or other employment entitlements that may accrue in the future;

(b) as against Daniel C. Casey (**Casey**):

(i) a declaration that Casey is liable for an amount equal to six months' wages under section 131 of the *Business Corporations Act*, RSO 1990, c B.16 (**OBCA**), and damages in a corresponding amount jointly and severally with Cresford;

(c) as against each of the Cresford Defendants:

(i) damages for oppression in the amount of \$3,000,000;

(ii) a declaration pursuant to section 248 of the *OBCA* that the business of the corporate defendants and their affiliates was conducted, and the powers of their directors were exercised, in a manner that was oppressive, unfairly prejudicial and unfairly disregarded the interests of the plaintiff;

- (iii) an order pursuant to section 248 of the *OBCA* that this Honourable Court finds appropriate, including compensating the plaintiff for the defendants' oppressive conduct;
- (d) pre- and post-judgment interest in accordance with the *Courts of Justice Act*, RSO 1990, c C.43, as amended ("*CJA*");
- (e) costs of this action on a substantial indemnity basis; and
- (f) such further and other relief as the nature of this case may require and this Honourable Court deems just.

A. Parties

2. Millar resides in Toronto, Ontario. Millar was employed by the corporate defendants until his constructive dismissal, most recently as Vice President, Planning and Development.

3. Each of the corporate defendants (together, **Cresford**) are Ontario corporations or partnerships headquartered in Toronto. They are each part of a commonly owned group of companies and partnerships engaged in the development, construction, marketing and sale of condominiums in Toronto, Ontario under the business name Cresford.

4. Cresford (Rosedale) Developments Inc. and East Downtown Redevelopment Partnership (**EDRP**) are entities in the Cresford Group. EDRP acts as a management company for Cresford and is 99% owned by Cresford (Rosedale) Developments Inc.

5. Cresford conducts its real estate development business through a series of project companies that hold title to and carry out individual development projects. As further described below, the following projects and associated project companies are subject to a statutory stay of proceedings in connection with ongoing insolvency proceedings:

- (a) The Clover on Yonge (**Clover**), a 44-storey condominium located near Yonge and Bloor owned by Clover on Yonge Inc. in its capacity as general partner of Clover on Yonge Limited Partnership;
- (b) Halo Residences on Yonge (**Halo**), a 38-storey condominium tower located on Yonge Street between Wellesley and Carlton in Toronto owned by 480 Yonge Street Inc., the general partner of 480 Yonge Street Limited Partnership; and
- (c) The Residences of 33 Yorkville (**33 Yorkville**), a condominium with one 68-storey tower and one 42-storey tower owned by 33 Yorkville Residences Inc., in its capacity as general partner of 33 Yorkville Residences Limited Partnership.

6. Cresford remains in control of the following projects and associated project companies, which are not subject to any insolvency proceeding:

- (a) Yonge Street Living Residences (**YSL**), an 85-storey condominium tower located at the corner of Yonge and Gerrard in Toronto, which is owned by YSL Residences Inc. and 9615334 Canada Inc. in its capacity as the general partner of YG Limited Partnership;

- (b) 59 Hayden Street (**59 Hayden**), a completed 8-storey office building with retail at grade located near the corner of Hayden and Church Street in Toronto, which is owned by 50 Charles Street Limited;
- (c) 357A and 357 1/2 Yonge Street (**357 Yonge**), two low-rise commercial buildings located on Yonge Street, which are owned by YSL Residences Inc.;
- (d) 11 Gloucester Street (**11 Gloucester**), a freehold heritage building that is owned by 11 Gloucester Street Inc.; and
- (e) 69 Hayden Street (**69 Hayden**), a vacant parcel of land near the 59 Hayden building, which is owned by 69 Hayden Street Limited.

7. Cresford Holdings Ltd. owns and controls each of the Cresford project companies except for those related to the Clover project.

8. The defendant, Daniel Casey (**Casey**), is an individual resident in Ontario. At all material times, Casey was the principal of Cresford and was the beneficial owner and directing mind of Cresford. Casey is a director of the Cresford companies.

B. Millar's Employment by Cresford

9. In 2001, Cresford hired Millar as a Project Coordinator. In around July of 2017, Millar was promoted to the position of Director of Planning and Development. Millar remained with Cresford for over 10 years.

10. In February 2012, Millar accepted an offer to act as the Vice President of Planning and Development at a competing real estate developer and resigned from Cresford.

11. In 2014, Cresford approached Millar and asked him to return as Vice President of Planning and Development. Based on the compensation and bonuses that Cresford was offering, Millar accepted their offer.

12. Cresford drafted and delivered an employment agreement dated November 5, 2014 to Millar, which he signed without any amendment (the **Employment Agreement**). Millar was employed as Cresford's Vice President of Planning and Development pursuant to the Employment Agreement from February 2015 until his recent dismissal, described below.

13. Under the Employment Agreement drafted by Cresford, Millar's employer was identified as "Cresford Developments", which is not a legal entity or registered business name. Rather, it is a generic term applying to the entire Cresford group of companies. Because Millar worked for all of Cresford's developments as described below, he was employed in common by all the Cresford companies, as well as by the companies that are the subject of stays of proceedings listed at paragraph 5 above, who are not named as defendants herein because of those stays.

C. Millar's Duties and Compensation Entitlements

14. As Vice President of Planning and Development, Millar was responsible for leading the planning and development of Cresford's real estate projects from inception through to completion and closing. His duties included leading: due diligence efforts; planning and municipal approvals processes to obtain zoning and official plan amendments; the negotiation and execution of complex

municipal agreements; and the process of obtaining building permits, construction-related permits, draft plan approval, occupancy and the required registration and severance for project closings.

15. Millar performed these responsibilities for each of Cresford's new condominium projects, as well as several other real estate projects. In particular, Millar was responsible for planning and development for each of the Clover, Halo, Yorkville, YSL and 59 Hayden condominium projects. Millar also performed various work on the 357 Yonge project (due diligence on the purchase, as well as the project's involvement in the YSL approvals process), the 11 Gloucester project (due diligence on the purchase) and the 69 Hayden property (dealing with municipal matters).

16. In carrying out these responsibilities, Millar acted on behalf of each of the project company defendants associated with that project. These project companies acted through a common management team, which gave directions to and exercised control over Millar on each project company's behalf. Each of the project companies were accordingly a common employer of Millar and jointly owed all of an employer's obligations to him.

17. At the time of his dismissal, Millar's annual compensation was:

- (a) a salary of \$300,000 per year;
- (b) a car allowance (\$600 per month) and car insurance allowance (\$137.41 per month);
- (c) gas for personal and business use;
- (d) 4 weeks' vacation with pay;

- (e) group benefit coverage; and
- (f) certain project-based bonuses, as described below.

18. An integral part of Millar's compensation were significant bonuses, which included both cash entitlements and credits granted on the purchase of units in Cresford condominium projects.

19. For example, as a signing bonus under the Employment Agreement, Cresford granted Millar a \$200,000 credit that could be applied towards the purchase of a Cresford condominium unit in any new development announced after his start date. The Employment Agreement also granted Millar a series of earned cash bonuses that were payable following the registration of various Cresford condominium projects.

20. As Cresford developed new projects, Millar continued to receive project-based bonuses, which increased in amount over time. These bonuses were an essential term of Millar's employment.

21. Millar also entered into agreements of purchase and sale for units in the Clover project (on December 22, 2015) and in the Yorkville project (on May 29, 2018). Millar was offered preferential terms for these purchases as bonus compensation for his work on the projects.

22. To grant these bonuses, Cresford amended the agreements of purchase and sale for the Clover unit (on December 22, 2015 and January 21, 2020) and for the Yorkville unit (on May 29, 2018 and January 21, 2020). These amendments limited the deposits that Millar was obliged to pay, fixed the maximum amounts of closing adjustments, and recorded credits to Millar against the purchase price (in amount of \$17,596 on the Clover unit and \$23,716 on the Yorkville unit).

The Clover and Yorkville units have appreciated significantly in value since Millar agreed to purchase them.

23. On November 29, 2018, Millar executed an amendment to the Employment Agreement (the **Amending Agreement**) that, among other things, confirmed the following earned bonuses (together, the **Bonuses**):

- (a) a \$200,000 cash bonus to be paid within 60 days after the final registration of the declaration of any new developments;
- (b) a credit bonus of \$350,000 to be applied to his purchase of a unit in the Yorkville project;
- (c) a credit bonus of \$200,000 to be applied to his purchase of a unit in the Clover project (being the bonus previously granted in the Employment Agreement, which was applied to a unit in the Clover project);
- (d) cash bonuses of \$100,000 payable 60 days after the final registration of the declaration for each of the Clover, Halo and Yorkville projects;
- (e) a cash bonus of \$250,000 for the YSL project, payable in three \$83,333.33 installments upon the following project milestones: the enactment of the zoning by-law and expiry of appeal period, receipt of the above grade structural building permit, and 60 days after the final registration of the declaration of the condominium.

24. In January 2020, Casey called a meeting of five senior employees including Millar and granted each of them a further bonus of \$250,000 on behalf of Cresford. He advised that the intention of this bonus was to reward these senior employees for seeing Cresford through “tough times.” By this time, as described below, Cresford had begun to experience financial distress. Casey provided Millar with a cheque for \$75,000 to satisfy part of that bonus amount. He promised that Cresford would pay the remaining bonus amount of \$175,000 one year later, in January 2021.

25. Each of the above bonuses were earned and remained in existence at the time of Millar’s dismissal. In addition, a cash bonus of \$83,333.33 became payable on November 4, 2019 in relation to the YSL project.

26. Millar’s cash compensation was paid by EDRP, which acted as a paymaster for the Cresford group, receiving fees from project companies and using those fees to pay, among other things, Cresford’s employees. To the best of Millar’s knowledge, EDRP has no material assets of its own and carries out no business other than servicing Cresford and its project companies. Bonuses in the form of credits against the purchase of units in Cresford developments were credited by the Cresford company that owned the respective developments.

D. Cresford’s Financial Distress and Commitments to Honour Millar’s Bonuses

27. Over the course of 2019, Cresford began to experience significant financial distress. In early 2020, allegations surfaced of financial irregularities within certain Cresford developments. As a result of these allegations, several of Cresford’s secured creditors arranged for an investigation of these allegations and later reported that:

- (a) Cresford had surreptitiously obtained a loan to fulfill its lenders' requirement that Cresford inject equity into the projects, and had then used lender funds to service that secret loan;
- (b) Cresford had maintained two sets of books. One set of books showed costs consistent with the construction budget provided to lenders. A second, secret set of books showed overspending above Cresford's approved construction budgets; and
- (c) Cresford had hidden increased costs by selling units to its suppliers at substantial discounts to their listing prices, without disclosing these adjustments to its lenders.

28. In early March 2020, Cresford began preparing to commence an application for relief under the *Companies' Creditors Arrangement Act*. As Cresford's finances deteriorated, Millar raised concerns with Casey on multiple occasions about whether he would receive his earned Bonuses.

29. Casey provided his personal commitment that Cresford would honour the credits granted on Millar's Clover and Yorkville unit as well as the original purchase prices in Millar's purchase and sale agreements, and that Cresford would pay the outstanding Bonuses that had by then accrued. In particular, Casey assured Millar that Cresford would soon pay a milestone Bonus of \$83,333 for the YSL project (described at subparagraph 23(e) above) that had accrued in November 2019. Millar relied on Casey's commitment, which induced him to continue to work for Cresford.

30. On March 21, 2020, David Mann (**Mann**), Cresford's CFO, advised Millar that his outstanding Bonuses would remain outside of the insolvency process, were on Cresford's account and would be paid. Millar similarly relied on Mann's assurances and continued to work for

Cresford. Three days later, Mann confirmed that the outstanding \$83,333.33 Bonus would be paid by April 15, 2020.

31. On March 27, 2020, Cresford's secured creditors obtained orders appointing receivers over the Clover and Halo project companies (in a proceeding with the court file number CV-20-00637301-00CL) and the Yorkville project companies (CV-20-00637297-00CL). After the receivership orders, Millar assisted the receiver on the insolvent projects and continued to work for Cresford on its solvent projects.

32. On March 31, 2020, after the receivership orders were issued, Mann emailed Millar and other employees and confirmed that they would remain employees of Cresford under their current contracts for at least 30 days.

E. Demands for Confirmation that Millar's Employment Entitlements Would be Honoured

33. Following the receivership orders, Millar made repeated requests for Cresford to confirm that his employment entitlements, including his unit credit Bonuses, the purchase prices in the signed purchase and sale agreements, and his cash Bonuses would continue to be honoured. Despite their past assurances, neither Casey, Mann nor Cresford provided the requested confirmation.

34. On April 10, 2020, Millar's counsel sent letters to the receiver for Clover and Yorkville, PricewaterhouseCoopers (**PwC**), requesting confirmation that his unit credit Bonuses would be honoured in the receivership. In response, PwC offered to pay drastically reduced bonuses to Millar in exchange for his continued work on the project companies in receivership.

35. On May 5, 2020, Millar emailed Casey, Mann and others to advise them that PwC was unwilling to honour his employment agreement and requested that Cresford (that is, those companies in the group not in receivership) honour his employment entitlements.

36. On May 21, 2020, Casey requested that Millar provide urgent assistance to the YSL project. Millar agreed to do so but again requested confirmation that his outstanding Bonuses and entitlements would be honoured. Casey advised that Cresford would provide an offer the next day dealing with Millar's outstanding Bonuses and unit credits.

37. Despite Millar's repeated requests afterwards, Cresford did not provide such an offer and did not confirm what Bonuses and entitlements it would honour. Instead, it made repeated promises that it would deliver offers outlining what it was prepared to pay Millar by a series of deadlines, including May 24, May 26, May 28, June 12 and June 22, 2020. Contrary to these promises, it did not deliver offers by any of these deadlines.

38. On June 22, 2020, the Clover project receivership was converted into a proceeding under the *Companies' Creditors Arrangement Act* (CV-20-00642928-00CL). As part of that process, Concord Land Developments Limited (**Concord**) purchased all of the shares of the Clover project companies.

39. By mid-July 2020, Cresford had still not paid Millar's \$83,333.33 Bonus for the YSL project that had been due since November 2019, had not confirmed it would honour his other Bonuses earned and to be earned including unit credits, and had not presented its promised offer for how and when it would pay those amounts or proposed alternative amounts. In addition, Millar learned that Cresford intended not to honour the credits or purchase prices outlined in Millar's

purchase and sale agreements against the unit purchases that it had granted him in the Amending Agreement.

40. On July 16, 2020, Millar wrote to Casey and Cresford and advised that he was not prepared to wait any longer for Cresford to honour its commitments, while being asked to continue to work for Cresford. He warned that he would consider himself constructively dismissed if by July 24, 2020, his outstanding \$83,333.33 Bonus was not paid and satisfactory commitments were not received regarding his credits for the units (which had appreciated considerably in value). He also requested confirmation that his future Bonuses would be paid if and as accrued.

41. Cresford failed to pay Millar's outstanding Bonus or to confirm that it would otherwise honour Millar's employment entitlements by July 24, 2020. Millar therefore confirmed in writing that he had been constructively dismissed and ceased working.

42. Cresford did not deny that it had constructively dismissed Millar in response to his July 16 or July 24, 2020 letters and has not denied that fact as of the date of this Statement of Claim.

F. Breach of Contract

43. Under the Employment and Amending Agreements, Cresford was contractually required to pay or credit to Millar the following accrued Bonuses:

- (a) the cash bonus of \$83,333.33 that accrued on November 4, 2019;
- (b) the credit bonus of \$350,000 on his purchase of a unit in the Yorkville project;
- (c) the adjustment of \$23,716 on the purchase of the Yorkville unit;

- (d) the credit bonus of \$200,000 on his purchase of a unit in the Clover project;
- (e) the adjustment of \$17,596 on the purchase of the Clover unit; and
- (f) the cash bonus of \$175,000 orally promised by Casey.

44. Cresford has breached its contractual obligations to Millar by failing to pay the \$83,333.33 bonus that was outstanding. As well, Cresford has repudiated its contractual obligation to honour the \$350,000 and \$200,000 credit bonuses on Millar's unit purchases, the adjustments on those units, and the additional \$175,000 cash bonus. Millar has suffered damages as a result of these breaches, which deprive him of the compensation that he earned from his past service to Cresford.

45. Millar also seeks a declaration that Cresford will be liable for the remainder of his bonus entitlements when they accrue based on the advancement of Cresford's projects. This Court has the jurisdiction to determine Cresford's contractual rights and obligations in the manner requested. The dispute is real and not theoretical, in light of Cresford's repudiation of Millar's other bonus entitlements. Millar and Cresford have genuine interests in the dispute. The requested declaration will settle a live controversy between the parties.

46. Finally, the receiver and the *CCAA* debtor have indicated that they may take steps to disclaim all agreements of purchase and sale as part of the insolvency proceedings. Such a disclaimer would include Millar's agreements to purchase the Clover and Yorkville units, which have appreciated significantly in value. Such a disclaimer would breach the existing agreements of purchase and sale with Millar and cause significant damages, including the loss of the units' significant appreciation in market value and the potential loss of Millar's unit credits.

G. Wrongful Dismissal

47. By persistently refusing to honour Millar's employment entitlements, Cresford implemented significant changes to Millar's employment. The essential terms and conditions of Millar's employment substantially changed as a consequence of Cresford's actions.

48. Cresford did not consult Millar before implementing these changes. Rather, Cresford continually delayed and reneged on its promises to confirm Millar's contractual entitlements in order to induce him to continue working for Cresford, including Cresford's solvent projects.

49. The changes to Millar's employment, imposed by Cresford, amount to constructive dismissal. The changes were substantial and detrimental, and entitled Millar to terminate his contract of employment and claim damages in lieu of reasonable notice.

50. The Employment Agreement expressly provided that Cresford was entitled to terminate Millar's employment without cause only upon 10 months' notice or bi-monthly pay in lieu of such notice, subject to a 50% reduction in pay in lieu in the event Millar finds alternative employment:

Termination of Employment:

The Employee's employment may be terminated as follows:

...

3. By the Employer without cause upon ten months' notice or, bi-monthly pay in lieu thereof subject to the following. In the event of the employee finding comparable alternative employment, the employee will be paid 50% of the balance owing on the remainder of the termination payment from the date of commencement of such employment to the end of the notice period herein. The Employee agrees that he will advise the Employer forthwith upon finding such comparable employment.

51. Cresford has failed to pay Millar pay in lieu of notice of termination. Accordingly, and subject to any reduction on account of future employment, Millar is entitled to the following damages for wrongful termination:

- (a) \$250,000, for ten months of salary;
- (b) \$7,374.10, for ten months of car and car insurance allowances;
- (c) \$36,538.46, for ten months of vacation entitlements plus three weeks of vacation accrued to date; and
- (d) The value of 10 months of gas allowance and benefits, in an amount to be particularized prior to trial.

H. Oppression

52. Millar reasonably expected that Cresford would manage its affairs in accordance with its legal obligations, including its commitments to lenders and to employees like Millar. Instead, Cresford carried out its affairs in a manner that was oppressive, unfairly prejudicial and unfairly disregarded Millar's interests.

53. In particular, unknown to Millar, Cresford structured its corporate and financial affairs in a manner that foreseeably defeated Millar's recovery of his employment entitlements. It also constructively dismissed Millar by failing to pay his outstanding bonus and by repudiating his earned bonus entitlements.

54. By acting and causing Cresford to act in this manner, Casey acted oppressively towards Millar.

I. Liability under the *OBCA*

55. At the material times, Casey was a director of one or more of the Cresford companies. Under section 131 of the *OBCA*, he is liable to Millar for all debts not exceeding six months' wages that became payable while he was a director for the services performed by Millar for Cresford. A receiving order has been made with respect to the Clover, Halo and Yorkville project companies under the *Bankruptcy and Insolvency Act*.

J. Place of Trial

56. Millar proposes that this action be tried in Toronto.

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DAVID RYAN MILLAR
Plaintiff

- and -

CRESFORD (ROSEDALE) DEVELOPMENTS INC. et. al.
Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

STATEMENT OF CLAIM

NAYMARK LAW

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Lawyer for the Plaintiff, David Ryan Millar

Appendix 11

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

DAVID RYAN MILLAR

Plaintiff

- and -

**CRESFORD (ROSEDALE) DEVELOPMENTS INC., EAST DOWNTOWN
REDEVELOPMENT PARTNERSHIP, YSL RESIDENCES INC., YG
LIMITED PARTNERSHIP, 9615334 CANADA INC., 50 CHARLES
STREET LIMITED, 69 HAYDEN STREET LIMITED, 11 GLOUCESTER
STREET INC., CRESFORD HOLDINGS LTD. and DANIEL C. CASEY**

Defendants

**STATEMENT OF DEFENCE OF CRESFORD (ROSEDALE)
DEVELOPMENTS INC., EAST DOWNTOWN REDEVELOPMENT
PARTNERSHIP, YSL RESIDENCES INC., YG LIMITED PARTNERSHIP,
9615334 CANADA INC., 50 CHARLES STREET LIMITED, 69 HAYDEN
STREET LIMITED, CRESFORD HOLDINGS LTD. AND DANIEL C.
CASEY**

1. The defendants, Cresford (Rosedale) Developments Inc., East Downtown Redevelopment Partnership, YSL Residences Inc., YG Limited Partnership, 9615334 Canada Inc., 50 Charles Street Limited, 69 Hayden Street Limited, Cresford Holdings Ltd., and Daniel C. Casey (together, the “**Defendants**”) deny the allegations in the Statement of Claim except as specifically admitted herein.

A. *The parties*

2. The plaintiff, David Ryan Miller (“**Millar**”) is an individual resident in Toronto, Ontario.

3. Each of the Defendants forms part of the Cresford group of companies (“**Cresford**”). Cresford is engaged in the development, construction, marketing, and sale of condominiums in Toronto.

4. The defendant, 11 Gloucester Street Inc., no longer forms part of Cresford. Cresford sold its interest in 11 Gloucester Street Inc. in or around June, 2020 in connection with its sale of the Clover project to a third party.

5. The majority of the Defendants are nominee project companies that hold title to individual real estate assets as bare trustees (together, the “**ProjectCo Defendants**”). None of the ProjectCo Defendants has any operations or employees. The ProjectCo Defendants consist of:

- (a) YSL Residences Inc., an Ontario corporation which owns 357A and 357 Yonge Street, Toronto and co-owns the Yonge Street Living Residences condominium tower at 383-385 Yonge Street, Toronto;
- (b) 9615334 Canada Inc., an Ontario corporation which, in its capacity as general partner of YG Limited Partnership, co-owns the Yonge Street Living Residences condominium tower at 383-385 Yonge Street, Toronto;
- (c) 50 Charles Street Limited, an Ontario corporation which owns 59 Hayden St., Toronto; and
- (d) 69 Hayden Street Limited, an Ontario corporation which owns 69 Hayden Street.

6. The defendant Cresford Holdings Ltd. (“**Cresford Holdings**”) is a holding company through which Cresford owns its interests in each of the above project companies. Cresford Holdings has no operations or employees.

7. The defendant Cresford (Rosedale) Developments Inc. (“**Cresford Rosedale**”) is an Ontario corporation which serves as a financing vehicle for Cresford projects via the provision of equity financing on a flow-through basis. It has no employees and no operations other than its provision of financing to Cresford projects.

8. The defendant YG Limited Partnership is an Ontario partnership which beneficially owns the Yonge Street Living Residences condominium tower at 383-385 Yonge Street, Toronto.

9. The defendant, East Downtown Redevelopment Partnership (“**East Downtown**”) is a partnership organized under the laws of Ontario. It provides development and construction services to each of the Cresford projects. East Downtown is the employer of Cresford’s personnel and was Millar’s employer at all material times.

10. The defendant, Daniel C. Casey (“**Casey**”), is an individual resident in Toronto, Ontario. He is the President and sole director of each of the corporate defendants. Contrary to paragraph 8 of the statement of claim, Casey is not the beneficial owner of the Cresford entities.

B. 2012 - 2020: Millar’s employment with the Cresford group of companies

11. The Defendants admit the summary of Millar’s employment history and compensation at paragraphs 9-12, 14-15, and 17-22 of the statement of claim, except for

its reference to Millar's alleged dismissal and except for its reference to Cresford generally as Millar's employer.

12. The Defendants deny that all of the corporate Defendants were Millar's common employer. Only East Downtown was Millar's employer as:

- (a) Millar was paid only by East Downtown and his T4s were issued only by East Downtown;
- (b) Human resources and other personnel matters were provided solely by East Downtown;
- (c) Millar never acted on behalf of any ProjectCo Defendants or Cresford Holdings, as those entities never had any operations at all. Rather, as stated above, the ProjectCo Defendants exist solely to hold title to specific real estate assets as bare trustees. In turn, Cresford Holdings exists solely to hold title to the ProjectCo Defendants. Millar always understood and agreed that the ProjectCo Defendants existed specifically for the purpose of, among other things, segregating the relevant real estate assets from the claims of Cresford's creditors generally; and
- (d) Millar never had any involvement with Cresford Rosedale or YG Limited Partnership and never performed any duties for their benefit. Cresford Rosedale and YG Limited Partnership were financing vehicles only.

C. Millar's contractual bonus entitlements

13. The Defendants admit Millar's summary of his compensation and bonus entitlements in paragraph 23 of the statement of claim, except for the allegation that the bonuses set out in the Amending Agreement were "earned."

14. To the contrary, each potential bonus entitlement, other than the credits to be applied to the purchase of condominium units, were expressly conditional on the occurrence of certain project milestones.

15. None of the milestones has occurred, except for the first of three milestones in respect of the YSL project, being the enactment of the zoning by-law and the expiry of the appeal period, which occurred in or around November, 2019.

16. As a result, the Defendants admit that the first \$83,333.33 bonus installment in respect of the YSL project became due and owing to Millar (the "**\$83K Bonus Installment**"). The Defendants deny that any of the other contractual bonuses referenced in paragraphs 23(a), (d), or (e) of the statement of claim (the "**Unearned Contractual Bonuses**") ever came due to Millar.

D. January 2020: additional bonus awarded to Millar as an incentive to guide Cresford through financial difficulties

17. In or around late 2019, Cresford began experiencing financial constraints.

18. As those constraints intensified in early 2020, Cresford had cash flow difficulties which prevented it from fulfilling all of its commitments to its creditors.

19. The Defendants admit that in January 2020, Casey called a meeting of certain employees, including Millar. At this meeting, Casey provided an update on the company's

difficult financial situation, and expressed his gratitude to each employee for their contributions during this tumultuous period.

20. By the date of this meeting, the initial \$83K Bonus Installment owing to Millar remained unpaid due to cash flow difficulties, and Millar knew it.

21. At this meeting, Casey offered Millar and others a bonus of \$250,000 on behalf of the employer (the “**Additional Bonus**”), on the following terms:

- (a) \$75,000, which was to be (and was) paid immediately; and
- (b) a further \$175,000 to be paid in early 2021, on the conditions that (i) Cresford could emerge from its financial difficulties by that time, and (ii) Millar remained with the company at that time (together with the Unearned Contractual Bonuses, the “**Unearned Bonuses**”).

22. The Additional Bonus was not required under the terms of Millar’s employment agreement.

23. It was understood and agreed by the parties that the purposes of the Additional Bonus were (i) to reward Millar for his efforts to date in seeing Cresford through difficult times, (ii) to further incent him to remain with Cresford in the following year despite the possibility of delays in satisfying bonus obligations to Millar, and (iii) to compensate Millar for accepting the risk of those delays.

24. Millar’s agreement to accept increased risk of delayed bonus payments was an essential term of the Additional Bonus.

25. Millar knew or ought to have known that it would not have been commercially reasonable for Casey to have offered a \$175,000 bonus payable a year later, regardless of Cresford's financial results during the intervening period, and regardless of whether Millar remained an employee during the intervening period.

26. Millar accepted the terms of the Additional Bonus offered by Casey at this meeting and chose to remain in his position, in full knowledge and acceptance of the risk that Cresford's financial position might never improve sufficiently to trigger any entitlement to the Unearned Bonuses, or to enable payment of the \$83K Bonus Installment.

E. Early 2020: Cresford's ongoing cash flow difficulties and its good-faith efforts to perform its contractual commitments

27. Cresford's cash flow difficulties continued into the spring of 2020, and the Bonus Installment remained unpaid to Millar. Millar asked Casey on certain occasions for an update regarding the company's financial position and the possible payment of the Bonus Installment. On each occasion, Casey advised Millar that the company still intended to pay the \$83K Bonus Installment (and any other Unearned Bonuses that might become earned) once the company became financially able to do so.

28. On March 2, 2020, certain of Cresford's secured creditors commenced applications seeking the appointment of receivers over multiple Cresford projects.

29. Millar was aware of the court proceedings at the time.

30. The Defendants deny the allegations at paragraph 30 of the statement of claim that David Mann ("**Mann**") told Millar on March 24, 2020 or at all that any of his bonuses would "remain outside of the insolvency process," that they "were on Cresford's account,"

that they “would be paid” regardless of Cresford’s financial condition, or that the \$83K Bonus Installment would be paid by April 15, 2020.

31. Like Casey, Mann only ever told Millar that his bonuses would be honoured as soon as the company had the financial wherewithal do so, and he made no representations as to when this would occur.

32. By March 24, 2020, the receiverships were imminent and it was known to all parties that the company would not be able to pay Millar any bonuses in the immediate future despite its desire to compensate Millar fairly.

33. Nonetheless, Millar chose to remain in his employment duties. This was a low-risk choice for him: staying with the company allowed him to continue to receive a high base salary while preserving his opportunity to eventually receive lucrative bonus payments in the event of a turnaround.

F. The receivership prevents the Defendants from granting credits on Cresford condominium units

34. On March 27, 2020, the Superior Court of Justice heard applications for the appointment of receivers over the project companies associated with the Halo, Clover, and Yorkville projects (none of whom are Defendants in this action).

35. The relevant Cresford project companies made best efforts to avoid receivership, including by successfully securing a three week adjournment of the receivership applications, and then by opposing the applications on the merits.

36. Nonetheless, the Court granted the applications on March 27, 2020.

37. As a result of the appointment of a receiver over the relevant project companies, those project companies no longer had the legal right to deal with any contracts respecting the projects, including Millar's agreements of purchase and sale in respect of the Clover and Yorkville units for which he was to receive purchase credits.

38. In turn, and through no fault of its own, East Downtown lost the ability to grant to Millar the purchase credits on those condominium units.

39. By virtue of the receiverships, the term of Millar's employment agreement entitling him to credits on units in Yorkville and Clover was frustrated and came to an end. The Defendants rely on the severability provisions of the *Frustrated Contracts Act*, R.S.O. 1990, c. F.34.

G. July 2020: Millar resigns

40. Although he had accepted the Additional Bonus in the full knowledge that there was material uncertainty as to the timing of any bonus payments, Millar changed his position by May, 2020 and began demanding immediate payment of the bonus.

41. At all times, Casey communicated to Millar that the company had every intention of honouring its obligations to Millar to the best of its ability, and still considered itself bound to Millar's employment agreement.

42. Nonetheless, and despite the significant Additional Bonus which had been granted to Millar specifically for the purpose of compensating him for the risk of payment delay, Millar unilaterally decided to treat himself as constructively dismissed. He stopped showing up for work as of July 24, 2020.

H. No constructive dismissal

43. Millar was not constructively dismissed. Rather, he resigned, effective July 24, 2020.

1. The \$83K Bonus Installment: no substantial alteration by the employer

44. The company's inability to pay the \$83K Bonus Installment to Millar when it came due was not a substantial alteration of an essential term of Millar's employment, having regard for:

- (a) the relatively minor amount of the \$83K Bonus Installment in proportion to Millar's compensation as a whole;
- (b) Millar's receipt of an *ex gratia* \$75,000 cash bonus within months of the Bonus Installment coming due, the effect of which was to put Millar in substantially the same financial position he would have been in had he received the \$83K Bonus Installment;
- (c) Millar's acceptance of an *ex gratia* \$175,000 contingent bonus, in part to compensate him for the delays in payment of the \$83K Bonus Installment; and
- (d) Millar's knowledge that the company still intended to pay the \$83K Bonus Installment as soon as it could.

2. The credit bonuses on the condominium units: no substantial alteration by the employer

45. With respect to the credit bonuses on Millar's purchase of Cresford condominium units, there was no conduct by the employer which substantially altered any terms of Millar's employment.

46. The company's inability to honour the credit bonuses was not attributable to the employer's conduct at all. It was attributable to the receivership of the relevant projects, which arose at the instance of secured creditors. The Defendants actively opposed the receiverships but were ultimately powerless to prevent them.

3. No other outstanding bonuses

47. No other bonuses were owing to Millar at the time of his resignation and there had been no other alterations to the terms of his employment.

4. The employer always intended to remain bound by Millar's employment agreement

48. At all material times, East Downtown (as Millar's employer) evinced an intention to remain bound by Millar's employment agreement. It was specifically and repeatedly communicated to Millar that his entitlements remained valid and would be honoured as soon as possible.

49. Millar always knew that the company was treating him the best it could under difficult financial circumstances, and he always knew that the company considered itself bound by his employment agreement.

5. In the alternative, Millar's wrongful dismissal damages are limited

50. In the alternative, if Millar was constructively dismissed (which is denied), then his wrongful dismissal damages are limited to ten months' compensation as particularized at paragraph 51 of the statement of claim.

51. The Defendants plead and rely on the termination clause in Millar's employment agreement. The Defendants also plead and rely on Millar's admission in the statement of claim that the termination clause is enforceable, and on his admission in the statement of claim that the termination clause limits his entitlements upon termination to the payments set out at paragraph 51 of the statement of claim.

52. The Defendants deny that any other amount in respect of bonus is owing during this ten month notice period. It was the intention of the parties that bonus entitlements and/or damages in lieu thereof would only accrue in respect of project milestones to which Millar actually contributed. In any event, no further bonus milestones will occur during the ten month notice period.

I. No oppression

53. The Defendants deny any liability in oppression. They have acted in good faith at all material times.

54. The Defendants deny that, unknown to Millar, they structured their corporate and financial affairs in a manner that foreseeably defeated Millar's recovery of his employment entitlements. The Defendants admit that they structured their corporate and financial affairs such that Millar understood and agreed that his only employment law recourse was against East Downtown.

J. No valid claim against Casey

55. There is no valid cause of action pleaded against Casey personally.

56. The personal liability provisions set out in section 131 of the *Business Corporations Act* do not apply. Millar's employer, East Downtown, is a partnership, not a corporation.

57. In any event, the conditions for personal liability set out in section 131(2) of the *Business Corporations Act* are not met with respect to any of the corporate Defendants.

58. Similarly, the conditions for imposing personal liability in oppression are also not met. Casey's conduct was in good faith and consistent with his duties as director and officer of the relevant entities at all material times. He derived no personal benefit from the matters complained of. Finally, Millar never reasonably expected that he would have recourse to Casey personally in respect of his employment law entitlements.

K. No liability

59. By virtue of Millar's resignation on July 24, 2020, he forfeited his entitlement to any further compensation other than what was already accrued and owing to him as of that date. For greater certainty, the Defendants admit that the \$83K Bonus Installment remains owing to Millar by East Downtown.

L. Failure to mitigate

60. Millar has a duty to take reasonable steps to mitigate any losses he has suffered. He is highly re-employable and has the ability to fully mitigate any losses.

61. To the extent that Millar has suffered any damages (which is denied), it is the result of his unreasonable failure to mitigate.

62. This action should be dismissed with costs.

November 6, 2020

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Plaintiff

-and- CRESFORD (ROSEDALE) DEVELOPMENTS INC., et al.
Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF DEFENCE

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East Downtown Redevelopment Partnership, YSL
Residences Inc., YG Limited Partnership, 9615334
Canada Inc., 50 Charles Street Limited, 69 Hayden
Street Limited, Cresford Holdings Ltd., and Daniel C.
Casey.

Appendix 12

Subject: RE: Clover CCAA re Millar (Claim No. 1222) -- Claims Review - Notice of Dispute
Date: Monday, January 11, 2021 at 2:41:03 PM Eastern Standard Time
From: David Gruber <GruberD@bennettjones.com>
To: James Gibson <jgibson@naymarklaw.com>, tammy.muradova@pwc.com
<tammy.muradova@pwc.com>
CC: Daniel Naymark <dnaymark@naymarklaw.com>
Attachments: image008.png, image009.png, image010.png, image011.png, image012.jpg, image013.png, image001.png

Tammy,

Further to James' email below, I can confirm that the Clover CCAA Applicants have acknowledged the specified claims of Mr. Millar and do consent to the Request for Amendment in respect of them.

Best,



David Gruber
Partner, Bennett Jones LLP

T. [604 891 5150](tel:6048915150) | F. [604 891 5100](tel:6048915100)

BennettJones.com

From: James Gibson <jgibson@naymarklaw.com>
Sent: Monday, December 21, 2020 1:06 PM
To: tammy.muradova@pwc.com; David Gruber <GruberD@bennettjones.com>
Cc: Daniel Naymark <dnaymark@naymarklaw.com>
Subject: FW: Clover CCAA re Millar (Claim No. 1222) -- Claims Review - Notice of Dispute

Tammy,

We understand that Concord and the Clover CCAA applicants have now acknowledged the claims asserted by Mr. Millar at paragraphs 1(a)-(c), 2(a)(i)-(iv) and 2(b) of his Request for Amendment in this matter, and consent to the Monitor's approval of those claims. I have copied their counsel who can confirm this fact if it has not already been communicated to the Monitor. In light of this acknowledgment and consent, and the points made in Mr. Millar's Notice of Dispute delivered on November 18, 2020, and which pointed out certain apparent factual misapprehensions by the Monitor with supporting records, please advise whether the Monitor will now accept Mr. Millar's claims. It is our view that that is now appropriate and that Mr. Millar should not be put to the costs of contesting these claims.

I have attached Mr. Millar's Notice of Dispute for ease of reference, which includes his Request for Amendment and the Monitor's Notice of Disallowance.

Regards,
Jamie

--

Jamie Gibson
jgibson@naymarklaw.com

NAYMARK LAW

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Toronto, ON M5T 1X3
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From: James Gibson <jgibson@naymarklaw.com>
Date: Wednesday, November 18, 2020 at 3:33 PM
To: "halo.clover@pwc.com" <halo.clover@pwc.com>
Cc: Daniel Naymark <dnaymark@naymarklaw.com>, "Meredith, Heather L." <HMEREDITH@MCCARTHY.CA>, "Steele, Alexander" <ASTEELLE@mccarthy.ca>, "Mica Arlette (CA)" <mica.arlette@pwc.com>
Subject: Re: Clover CCAA re Millar (Claim No. 1222) -- Claims Review - Notice of Dispute

Good afternoon,

Please find attached the notice of dispute filed on behalf of Mr. Millar.

Regards,
Jamie

--

Jamie Gibson
jgibson@naymarklaw.com

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From: Daniel Naymark <dnaymark@naymarklaw.com>
Date: Tuesday, November 17, 2020 at 11:09 AM
To: "Meredith, Heather L." <HMEREDITH@MCCARTHY.CA>
Cc: James Gibson <jgibson@naymarklaw.com>, "Steele, Alexander" <ASTEELLE@mccarthy.ca>, "Mica Arlette (CA)" <mica.arlette@pwc.com>
Subject: Re: [EXT] Re: Clover CCAA -- Claims Review - Notice of Revision or Disallowance

Thank you for this response and clarification.
Daniel

--

Daniel Naymark
NAYMARK LAW
t: (416) 640-6078 | f: (647) 660-5060
dnaymark@naymarklaw.com

From: "Meredith, Heather L." <HMEREDITH@MCCARTHY.CA>
Date: Tuesday, November 17, 2020 at 2:08 PM
To: Daniel Naymark <dnaymark@naymarklaw.com>
Cc: James Gibson <jgibson@naymarklaw.com>, "Steele, Alexander" <ASTEEL@mccarthy.ca>, "Mica Arlette (CA)" <mica.arlette@pwc.com>
Subject: RE: [EXT] Re: Clover CCAA -- Claims Review - Notice of Revision or Disallowance

Hi Daniel,

I have confirmed with PWC that the \$200,000 credit was disallowed. PWC noted it was referred to a "bonus credit" and based on the employment contract with Cresford Developments so disallowed on the same basis as the other employment-related claims.

Please let me know if you have any other questions.

Best,

Heather



Heather Meredith

Partner | Associée

Bankruptcy and Restructuring | Faillite et restructuration

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Toronto ON M5K 1E6

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From: Daniel Naymark <dnaymark@naymarklaw.com>

Date: Sunday, November 15, 2020 at 5:07 PM

To: "Meredith, Heather L." <HMEREDITH@MCCARTHY.CA>

Cc: James Gibson <jgibson@naymarklaw.com>, "Steele, Alexander" <ASTEEL@MCCARTHY.CA>

Subject: Re: Clover CCAA -- Claims Review - Notice of Revision or Disallowance

Hi Heather,

We have yet to receive a response to Jamie's email below. Can we please get one by no later than tomorrow, or alternatively a revised deadline to submit a notice of dispute? The current deadline is coming up this Wednesday, November 18 and as yet we still do not know what the scope of the notice of disallowance is.

I assume you are the best person to write to for assistance with this but please let me know if we should be directing this elsewhere. We are trying to avoid unnecessary cost or prejudice to Mr. Millar and require a response for obvious reasons.

Thank you,
Daniel

--

Daniel Naymark

NAYMARK LAW

t: (416) 640-6078 | f: (647) 660-5060

dnaymark@naymarklaw.com

From: James Gibson <jgibson@naymarklaw.com>

Date: Monday, November 9, 2020 at 2:22 PM

To: "Halo Clover (CA)" <halo.clover@pwc.com>, Ryan Millar <david.ryan.millar@gmail.com>

Cc: Daniel Naymark <dnaymark@naymarklaw.com>

Subject: Re: Clover CCAA -- Claims Review - Notice of Revision or Disallowance

Good afternoon,

We received the attached notice of revision or disallowance of claim made by our client, Mr. Millar, regarding claim number 1222. The notice refers to only three of the four claims made by Mr. Millar. We therefore write to seek clarification on the fourth claim, in order to advise Mr. Millar on how to respond.

The three claims addressed by the notice are Mr. Millar's:

1. **Claims for "constructive dismissal, bonuses and income tax payable"**, i.e., employment-related claims against the Clover corporations as employers in common. The notice disallows these claims (Reasons, second paragraph);

2. **Claims for "loss of bargain"**. The notice disallows this claim (Reasons, third paragraph); and
3. **D&O claim**. The notice advises that the Monitor is in the process of reviewing this claim and will revise or disallow it at a later date.

However, the notice does not expressly address Mr. Millar's claim in respect of credits totalling \$200,000 granted against the purchase price of his Clover unit, as described at paragraph 22(c) and 25 of Mr. Millar's claim. Please advise the Monitor's position respecting the claim for the loss of these credits as soon as possible, so that Mr. Millar can include them in a notice of dispute if necessary.

We had assumed these claims would not be controversial given that these credits were expressly granted by the Applicant, The Clover on Yonge Inc., by agreements in writing dated November 5, 2014 (enclosed as Attachment 2) and confirmed again in writing on November 29, 2018 (enclosed as Attachment 4). Indeed, as vendor of the unit, only The Clover on Yonge Inc. could have granted the credits.

Separately, we note that the Monitor appears to have misapprehended the content of Mr. Millar's employment agreement in disallowing his employment-related claims. We raise this in the hope that the Monitor will revise its position with this apparent oversight brought to its attention, and avoid the need for Mr. Millar to deliver a notice of dispute respecting this portion of his claim.

Specifically, the Monitor disallowed these claims on the basis that Mr. Millar's employment agreement (enclosed as Attachment 2, and later amended by Attachment 4) provides that "Cresford Developments" and East Downtown Redevelopment Partnership (EDRP) are his employers under his employment agreement, not the Clover CCAA Applicants. But Mr. Millar's employment agreement makes no reference to EDRP, and lists his employer only as "Cresford Developments".

As described at paragraphs 10-11 of Mr. Millar's Request for Amendment, "Cresford Developments" is not the name of a legal entity nor a registered business name of EDRP or any other person (as shown on the attached business name search). It is a generic term apparently describing the group of companies generally operating under the "Cresford" banner from time to time, including the Clover CCAA Applicants. At the very least, the employment agreement's reference to "Cresford Developments" as Mr. Millar's employer cannot reasonably be understood as contractually altering the default common law principle that Mr. Millar was employed in common by the Clover CCAA Applicants and other Cresford companies to which he provided services (as recently described in *Nortel Networks Corporation (Re)*, 2016 ONSC 6030). We understand that Mr. Millar's work for the Clover development, described in his Request for Amendment, is well known to the Monitor given his continued work with the Monitor after its appointment.

In short, it appears that the Monitor disallowed Mr. Millar's employment-related claims in the erroneous belief that the term "Cresford Developments" in Mr. Millar's employment agreement referred to a specific legal entity that is different from the Clover CCAA Applicants. That is not the case.

Regards,
Jamie

--

Jamie Gibson

jgibson@naymarklaw.com

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From: <ailsa.b.agnew@pwc.com> on behalf of "Halo Clover (CA)" <halo.clover@pwc.com>

Date: Wednesday, November 4, 2020 at 1:43 PM

To: "david.ryan.millar@gmail.com" <david.ryan.millar@gmail.com>, James Gibson
<jgibson@naymarklaw.com>

Subject: Clover CCAA -- Claims Review - Notice of Revision or Disallowance

Dear Ryan Millar,

The Monitor has reviewed your Claim against The Clover on Yonge Inc. and/or The Clover on Yonge Limited Partnership and has issued a Notice of Revision or Disallowance, as attached. Please be advised that the Monitor is in the process of reviewing your claim against one or more of the Directors and/or Officers of The Clover on Yonge Inc. and/or The Clover on Yonge Limited Partnership and will revise or disallow such claim at a later date.

If you dispute this Notice of Revision or Disallowance, you must, no later than 5:00 p.m. (Toronto time) on November 18, 2020, being the Business Day which is fourteen days after the Notice of Revision or Disallowance is sent by the Monitor (see paragraph 11 of the Claims Procedure Order), notify the Monitor by delivery of a Notice of Dispute in accordance with the Claims Procedure Order.

The form of Notice of Dispute is the last page in the attachment to this email.

PricewaterhouseCoopers Inc., LIT
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Clover CCAA Applicants,
and not in its personal or corporate capacity.

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Claimant Name: David Ryan Millar Acknowledgment Number: 1222

August 17, 2020

PricewaterhouseCoopers Inc., LIT
In its capacity as the Monitor of the Clover CCAA Applicants
PwC Tower
18 York St, Suite 2600
Toronto, Ontario M5J 0B2
Attention: Tammy Muradova
E-mail: halo.clover@pwc.com

**REQUEST FOR AMENDMENT OF
DAVID RYAN MILLAR**

I, **DAVID RYAN MILLER**, of 80 Brookside Drive, Toronto, Ontario, do hereby request that the information provided in this Acknowledgement of Claim No. 1222 (attached as **Attachment 1**) be amended as follows:

1. **PARTICULARS OF CLAIM:**

(a) As against the Clover on Yonge Inc. and the Clover on Yonge Limited Partnership (together, **Clover**):

(i) damages for constructive dismissal: \$293,912.56, being:

(1) contractual pay in lieu of 10 months' notice: \$250,000.00;

(2) ten months of car and car insurance allowances: \$7,374.10;

- (3) ten months of vacation entitlements plus three weeks of vacation accrued to date: \$36,538.46; and
 - (ii) bonus accrued in November 2019: \$83,333.33;
- (b) As against Daniel C. Casey (**Casey**):
 - (i) joint liability for the amounts described in paragraph 1(a) above, for damages caused by oppression pursuant to section 248 of the *Business Corporations Act*, RSO 1990, c B.16 (**OBCA**), in the amounts described in paragraph 1(a) above;
 - (ii) joint liability for the amounts described in paragraph 1(a)(ii) above, as a result of statutory liability for six months' wages pursuant to section 131 of the *OBCA*;
- (c) Total value of the Claims (described above): \$377,245.89.

2. PARTICULARS OF POTENTIAL CLAIM, including contingent Claims:

- (a) As against Clover:
 - (i) Value of credits received towards purchase of Clover unit: \$17,596.00;
 - (ii) Bonus unit credit for the Clover unit: \$200,000.00;

- (iii) Bonus earned and due January 2021, described in paragraph 23 below:
\$175,000.00;
 - (iv) Bonus payable 60 days after registration of the final declaration on the Clover project: \$100,000.00;
 - (v) Contingent claim for damages on the basis that I should be compensated for the difference between the purchase price of my condo unit and the fair market value of that unit per Clover and any additional expenses that I may incur now to purchase a similar unit in the same location, in the amount of \$464,937.78; and
 - (vi) Damages arising from income tax payable on the amounts in subparagraphs 2(a)(i), (ii) and (v) above that would not otherwise have been payable: \$365,360.33; and
- (b) As against Casey:
- (i) joint liability for the amounts described in paragraph 2(a) above, for damages caused by oppression pursuant to section 248 of the *Business Corporations Act*, RSO 1990, c B.16 (**OBCA**), in the amounts described in paragraph 1(a) above;

(ii) joint liability for the amounts described in paragraph 2(a)(iii) to (vi) above, as a result of statutory liability for six months' wages pursuant to section 131 of the *OBCA*; and

(c) Total value of the Potential Claims: \$1,322,894.11.

THE FURTHER PARTICULARS of the above Claim and Potential Claim are:

A. THE CRESFORD GROUP

1. David Ryan Millar (**Millar**) was employed in common by a number of companies, including Clover, until his constructive dismissal, most recently as Vice President, Planning and Development.

2. The CCAA applicants are part of a commonly owned group of companies and partnerships (together, **Cresford**) engaged in the development, construction, marketing and sale of condominiums in Toronto, Ontario under the business name Cresford.

3. Cresford conducts its real estate development business through a series of project companies that hold title to and carry out individual development projects.

4. Millar performed work for the following Cresford companies (together, the **Cresford Employers**) as employers in common, and worked on each of the real estate projects associated with them: Clover; Cresford (Rosedale) Developments Inc.; East Downtown Redevelopment Partnership (**EDRP**); 480 Yonge Street Limited Partnership and 480 Yonge Street Inc., its general partner; 33 Yorkville Residences Limited Partnership and 33 Yorkville Residences Inc., its general

partner; YG Limited Partnership, and 9615334 Canada Inc. in its capacity as its general partner; 50 Charles Street Limited; YSL Residences Inc.; 11 Gloucester Street Inc.; and 69 Hayden Street Limited.

5. Casey is an individual resident in Ontario. At all material times, Casey was the principal of Cresford and was the beneficial owner and directing mind of Cresford. Casey is a director of each of the Cresford Employers.

B. MILLAR'S EMPLOYMENT BY CRESFORD

6. In 2001, Cresford hired Millar as a Project Coordinator. Millar was promoted to the position of Director of Planning and Development and remained with Cresford for over 10 years.

7. In February 2012, Millar accepted an offer to act as the Vice President of Planning and Development at a competing real estate developer and resigned from Cresford.

8. In 2014, Cresford approached Millar and asked him to return as Vice President of Planning and Development. Based on the compensation and bonuses that Cresford was offering, Millar accepted their offer.

9. Cresford drafted and delivered an employment agreement dated November 5, 2014 to Millar, which he signed without any amendment (the **Employment Agreement**, included as **Attachment 2**). Millar was employed as Cresford's Vice President of Planning and Development pursuant to the Employment Agreement from February 2015 until his recent dismissal, described below.

10. Under the Employment Agreement drafted by Cresford, Millar's employer was identified as "Cresford Developments", which is not a legal entity or registered business name. Rather, it is a generic term applying to the entire Cresford group of companies.

11. Because Millar worked for all of the Cresford Employers, he was employed in common by them, including Clover, within the meaning set out in *Downtown Eatery (1993) Ltd. v. Ontario*, [2001 CanLII 8538](#) (Ont. C.A.) and *Nortel Networks Corporation (Re)*, [2016 ONSC 6030](#).

C. MILLAR'S DUTIES AND COMPENSATION ENTITLEMENTS

12. As Vice President of Planning and Development, Millar was responsible for leading the planning and development of Cresford's real estate projects from inception through to completion and closing. His duties included leading: due diligence efforts; planning and municipal approvals processes to obtain zoning and official plan amendments; the negotiation and execution of complex municipal agreements; and the process of obtaining building permits, construction-related permits, draft plan approval, occupancy and the required registration and severance for project closings.

13. Millar performed these responsibilities for each of the Cresford Employers. In particular, Millar was responsible for planning and development for each of the Clover, Halo, Yorkville, YSL and 59 Hayden condominium projects. Millar also performed various work on the 357 Yonge project (due diligence on the purchase, as well as the project's involvement in the YSL approvals process), the 11 Gloucester project (due diligence on the purchase) and the 69 Hayden property (dealing with municipal matters).

14. In carrying out these responsibilities, Millar acted on behalf of each of the project company Cresford Employers associated with that project. These project companies acted through a

common management team, which gave directions to and exercised control over Millar on each project company's behalf. Each of the Cresford Employers were accordingly a common employer of Millar and jointly owed all of an employer's obligations to him, including Clover.

15. At the time of his dismissal, Millar's annual compensation was:

- (a) a salary of \$300,000 per year;
- (b) a car allowance (\$600 per month) and car insurance allowance (\$137.41 per month);
- (c) gas for personal and business use;
- (d) 4 weeks' vacation with pay;
- (e) group benefit coverage; and
- (f) certain project-based bonuses, as described below.

16. An integral part of Millar's compensation were significant bonuses, which included both cash entitlements and credits granted on the purchase of units in Cresford condominium projects.

17. For example, as a signing bonus under the Employment Agreement, Cresford granted Millar a \$200,000 credit that could be applied towards the purchase of a Cresford condominium unit in any new development announced after his start date. The Employment Agreement also granted Millar a series of earned cash bonuses that were payable following the registration of various Cresford condominium projects.

18. As Cresford developed new projects, Millar continued to receive project-based bonuses, which increased in amount over time. These bonuses were an essential term of Millar's employment.

19. Millar also entered into agreements of purchase and sale for units in the Clover project (on December 22, 2015) and in the Yorkville project (on May 29, 2018). Millar was offered preferential terms for these purchases as bonus compensation for his work on the projects.

20. To grant these bonuses, Cresford amended the agreements of purchase and sale for the Clover unit (on December 22, 2015 and January 21, 2020) and for the Yorkville unit (on May 29, 2018 and January 21, 2020). These amendments limited the deposits that Millar was obliged to pay, fixed the maximum amounts of closing adjustments, and recorded credits to Millar against the purchase price (in amount of \$17,596 on the Clover unit and \$23,716 on the Yorkville unit).

21. The agreements of purchase and sale for the Clover unit, together with the relevant amendment, is included as **Attachment 3**. The Clover unit has appreciated significantly in value since Millar agreed to purchase it.

22. On November 29, 2018, Millar executed an amendment to the Employment Agreement (the **Amending Agreement**, included as **Attachment 4**) that, among other things, confirmed the following earned bonuses (together, the **Bonuses**):

- (a) a \$200,000 cash bonus to be paid within 60 days after the final registration of the declaration of any new developments;

- (b) a credit bonus of \$350,000 to be applied to his purchase of a unit in the Yorkville project;
- (c) a credit bonus of \$200,000 to be applied to his purchase of a unit in the Clover project (being the bonus previously granted in the Employment Agreement, which was applied to a unit in the Clover project);
- (d) cash bonuses of \$100,000 payable 60 days after the final registration of the declaration for each of the Clover, Halo and Yorkville projects;
- (e) a cash bonus of \$250,000 for the YSL project, payable in three \$83,333.33 installments upon the following project milestones: the enactment of the zoning by-law and expiry of appeal period, receipt of the above grade structural building permit, and 60 days after the final registration of the declaration of the condominium.

23. In January 2020, Casey called a meeting of five senior employees including Millar and granted each of them a further bonus of \$250,000 on behalf of Cresford. He advised that the intention of this bonus was to reward these senior employees for seeing Cresford through “tough times.” By this time, as described below, Cresford had begun to experience financial distress. Casey provided Millar with a cheque for \$75,000 to satisfy part of that bonus amount. He promised that Cresford would pay the remaining bonus amount of \$175,000 one year later, in January 2021.

24. Each of the above bonuses were earned and remained in existence at the time of Millar’s dismissal. In addition, a cash bonus of \$83,333.33 became payable on November 4, 2019 in relation to the YSL project.

25. Millar's cash compensation was paid by EDRP, which acted as a paymaster for the Cresford group, receiving fees from project companies and using those fees to pay, among other things, Cresford's employees. To the best of Millar's knowledge, EDRP has no material assets of its own and carries out no business other than servicing Cresford and its project companies. Bonuses in the form of credits against the purchase of units in Cresford developments were credited by the Cresford company that owned the respective developments.

**D. CRESFORD'S FINANCIAL DISTRESS AND COMMITMENTS TO HONOUR
MILLAR'S BONUSES**

26. Over the course of 2019, Cresford began to experience significant financial distress. In early 2020, allegations surfaced of financial irregularities within certain Cresford developments. As a result of these allegations, several of Cresford's secured creditors arranged for an investigation of these allegations and later reported that:

- (a) Cresford had surreptitiously obtained a loan to fulfill its lenders' requirement that Cresford inject equity into the projects, and had then used lender funds to service that secret loan;
- (b) Cresford had maintained two sets of books. One set of books showed costs consistent with the construction budget provided to lenders. A second, secret set of books showed overspending above Cresford's approved construction budgets; and
- (c) Cresford had hidden increased costs by selling units to its suppliers at substantial discounts to their listing prices, without disclosing these adjustments to its lenders.

27. In early March 2020, Cresford began preparing to commence an application for relief under the *Companies' Creditors Arrangement Act*. As Cresford's finances deteriorated, Millar raised concerns with Casey on multiple occasions about whether he would receive his earned Bonuses.

28. Casey provided his personal commitment that Cresford would honour the credits granted on Millar's Clover and Yorkville unit as well as the original purchase prices in Millar's purchase and sale agreements, and that Cresford would pay the outstanding Bonuses that had by then accrued. In particular, Casey assured Millar that Cresford would soon pay a milestone Bonus of \$83,333 for the YSL project (described at subparagraph 23(e) above) that had accrued in November 2019. Millar relied on Casey's commitment, which induced him to continue to work for Cresford.

29. On March 21, 2020, David Mann (**Mann**), Cresford's CFO, advised Millar that his outstanding Bonuses would remain outside of the insolvency process, were on Cresford's account and would be paid. Millar similarly relied on Mann's assurances and continued to work for Cresford. Three days later, Mann confirmed that the outstanding \$83,333.33 Bonus would be paid by April 15, 2020.

30. On March 27, 2020, Cresford's secured creditors obtained orders appointing receivers over the Clover and Halo project companies (in a proceeding with the court file number CV-20-00637301-00CL) and the Yorkville project companies (CV-20-00637297-00CL). After the receivership orders, Millar assisted the receiver on the insolvent projects and continued to work for Cresford on its solvent projects.

31. On March 31, 2020, after the receivership orders were issued, Mann emailed Millar and other employees and confirmed that they would remain employees of Cresford under their current contracts for at least 30 days.

E. DEMANDS FOR CONFIRMATION THAT MILLAR'S EMPLOYMENT ENTITLEMENTS WOULD BE HONOURED

32. Following the receivership orders, Millar made repeated requests for Cresford to confirm that his employment entitlements, including his unit credit Bonuses, the purchase prices in the signed purchase and sale agreements, and his cash Bonuses would continue to be honoured. Despite their past assurances, neither Casey, Mann nor Cresford provided the requested confirmation.

33. On April 10, 2020, Millar's counsel sent letters to the receiver for Clover and Yorkville, PricewaterhouseCoopers (**PwC**), requesting confirmation that his unit credit Bonuses would be honoured in the receivership. In response, PwC offered to pay drastically reduced bonuses to Millar in exchange for his continued work on the project companies in receivership.

34. On May 5, 2020, Millar emailed Casey, Mann and others to advise them that PwC was unwilling to honour his employment agreement and requested that Cresford (that is, those companies in the group not in receivership) honour his employment entitlements.

35. On May 21, 2020, Casey requested that Millar provide urgent assistance to the YSL project. Millar agreed to do so but again requested confirmation that his outstanding Bonuses and entitlements would be honoured. Casey advised that Cresford would provide an offer the next day dealing with Millar's outstanding Bonuses and unit credits.

36. Despite Millar's repeated requests afterwards, Cresford did not provide such an offer and did not confirm what Bonuses and entitlements it would honour. Instead, it made repeated promises that it would deliver offers outlining what it was prepared to pay Millar by a series of deadlines, including May 24, May 26, May 28, June 12 and June 22, 2020. Contrary to these promises, it did not deliver offers by any of these deadlines.

37. On June 22, 2020, the Clover project receivership was converted into a proceeding under the *Companies' Creditors Arrangement Act* (CV-20-00642928-00CL). As part of that process, Concord Land Developments Limited (**Concord**) purchased all of the shares of the Clover project companies.

38. By mid-July 2020, Cresford had still not paid Millar's \$83,333.33 Bonus for the YSL project that had been due since November 2019, had not confirmed it would honour his other Bonuses earned and to be earned including unit credits, and had not presented its promised offer for how and when it would pay those amounts or proposed alternative amounts. In addition, Millar learned that Cresford intended not to honour the credits or purchase prices outlined in Millar's purchase and sale agreements against the unit purchases that it had granted him in the Amending Agreement.

39. On July 16, 2020, Millar wrote to Casey and Cresford and advised that he was not prepared to wait any longer for Cresford to honour its commitments, while being asked to continue to work for Cresford (attached as **Attachment 5**). He warned that he would consider himself constructively dismissed if by July 24, 2020, his outstanding \$83,333.33 Bonus was not paid and satisfactory commitments were not received regarding his credits for the units (which had appreciated

considerably in value). He also requested confirmation that his future Bonuses would be paid if and as accrued.

40. On July 17, 2020, counsel for Millar sent a letter to counsel for the CCAA Applicants and requested clarification of how Millar's bonus unit credit on the Clover unit would be treated under the proposed plan of arrangement (included as **Attachment 6**).

41. On July 20, 2020, counsel for the CCAA Applicants sent a letter advising that the plan of arrangement did not compromise any claims by Millar against his employer "Cresford", against whom Millar could claim any related losses (included as **Attachment 7**). Although the CCAA Applicants did not advise which company is Millar's employer "Cresford", this response suggested that the CCAA Applicants would not honour any of the Bonuses owing to Millar, including the bonus unit credit on the Clover unit.

42. Cresford failed to pay Millar's outstanding Bonus or to confirm that it would otherwise honour Millar's employment entitlements by July 24, 2020. Millar therefore confirmed in writing that he had been constructively dismissed and ceased working.

43. Cresford did not deny that it had constructively dismissed Millar in response to his July 16 or July 24, 2020 letters and has not denied that fact as of the date of this request for amendment.

F. BREACH OF CONTRACT

44. Under the Employment and Amending Agreements, the Cresford Employers and Clover were contractually required to pay or credit to Millar the following accrued Bonuses relevant to Millar's claim in this proceeding:

- (a) the cash bonus of \$83,333.33 that accrued on November 4, 2019;
- (b) the credit bonus of \$200,000 on his purchase of a unit in the Clover project;
- (c) the adjustment of \$17,596 on the purchase of the Clover unit; and
- (d) the cash bonus of \$175,000 orally promised by Casey.

45. The Cresford Employers and Clover has breached their contractual obligations to Millar by failing to pay the \$83,333.33 bonus that was outstanding. As well, they have repudiated their contractual obligation to honour the \$200,000 credit bonus on Millar's Clover, the adjustments on that unit, and the additional \$175,000 cash bonus. Millar has suffered damages as a result of these breaches, which deprive him of the compensation that he earned from his past service to the Cresford, including Clover.

46. The Cresford Employers and Clover will also be liable for the remainder of Millar's bonus entitlements when they accrue based on the advancement of Cresford's projects. In particular, Millar is entitled to a \$100,000 cash bonus payable 60 days after the registration of the final declaration for the Clover project.

47. The CCAA Applicants also seek to disclaim the agreement of purchase and sale on the Clover unit. Such a disclaimer would include Millar's agreements to purchase the Clover unit, which have appreciated significantly in value. Such a disclaimer would breach the existing agreements of purchase and sale with Millar and cause significant damages, including the loss of the units' significant appreciation in market value and the potential loss of Millar's unit credits.

48. Millar should be compensated for the difference between the purchase price of the Clover unit and the fair market value of that unit per the CCAA Applicants and any additional expenses that may be incurred now to purchase a similar unit in the same location.

49. A detailed calculation, together with supporting documents, is attached as **Attachment 8** explaining the difference between the purchase price of the unit, parking and upgrades as per my purchase and sale agreement and the fair market value of the same unit per the CCAA Applicants and any further additional expenses that will be incurred if the purchase and sale agreement is disclaimed. According to this calculation, the value of the contingent claim for appreciation is \$464,937.78 for damages.

50. Finally, Millar will likely have to pay income tax on any distributions made on account of the bonus credits on the Clover unit, which would not otherwise have been payable. Millar is accordingly entitled to damages of \$365,360.33 related to the income tax liabilities caused by Clover's failure to honour those credits, which are calculated in **Attachment 9**.

G. WRONGFUL DISMISSAL

51. By persistently refusing to honour Millar's employment entitlements, the Cresford Employers and Clover implemented significant changes to Millar's employment. The essential terms and conditions of Millar's employment substantially changed as a consequence of the Cresford Employers and Clover's actions.

52. The Cresford Employers, including Clover, did not consult Millar before implementing these changes. Rather, they continually delayed and reneged on its promises to confirm Millar's

contractual entitlements in order to induce him to continue working for the Cresford Employers and Clover.

53. The changes to Millar's employment, imposed by the Cresford Employers and Clover, amount to constructive dismissal. The changes were substantial and detrimental, and entitled Millar to terminate his contract of employment and claim damages in lieu of reasonable notice.

54. The Employment Agreement expressly provided that the Cresford Employers and Clover were entitled to terminate Millar's employment without cause only upon 10 months' notice or bi-monthly pay in lieu of such notice, subject to a 50% reduction in pay in lieu in the event Millar finds alternative employment:

Termination of Employment:

The Employee's employment may be terminated as follows:

. . .

3. By the Employer without cause upon ten months' notice or, bi-monthly pay in lieu thereof subject to the following. In the event of the employee finding comparable alternative employment, the employee will be paid 50% of the balance owing on the remainder of the termination payment from the date of commencement of such employment to the end of the notice period herein. The Employee agrees that he will advise the Employer forthwith upon finding such comparable employment.

55. The Cresford Employers and Clover have failed to pay Millar pay in lieu of notice of termination. Accordingly, and subject to any reduction on account of future employment, Millar is entitled to the following damages for wrongful termination:

- (a) \$250,000, for ten months of salary;

- (b) \$7,374.10, for ten months of car and car insurance allowances; and
- (c) \$36,538.46, for ten months of vacation entitlements plus three weeks of vacation accrued to date.

H. OPPRESSION

56. Millar reasonably expected that the Cresford Employers and Clover would manage their affairs in accordance with its legal obligations, including its commitments to lenders and to employees like Millar. Instead, the Cresford Employers and Clover carried out its affairs in a manner that was oppressive, unfairly prejudicial and unfairly disregarded Millar's interests.

57. In particular, unknown to Millar, Cresford and Clover structured their corporate and financial affairs in a manner that foreseeably defeated Millar's recovery of his employment entitlements. They also constructively dismissed Millar by failing to pay his outstanding bonus and by repudiating his earned bonus entitlements.

58. By acting and causing the Cresford Employers and Clover to act in this manner, Casey acted oppressively towards Millar.

I. LIABILITY UNDER THE *OBCA*

59. At the material times, Casey was a director of the Cresford Employers and Clover Under section 131 of the *OBCA*, he is liable to Millar for all debts not exceeding six months' wages that became payable while he was a director for the services performed by Millar for Cresford and Clover. A receiving order has been made with respect to Clover pursuant to section 131(2) of the *OBCA*.

Adelle Talbot

Witness



DAVID RYAN MILLAR
Creditor

Witness Name: *ADELLE TALBOT*

Appendix 13

**NOTICE OF REVISION OR DISALLOWANCE OF CLAIM
ACKNOWLEDGEMENT NUMBER 1222**

TO: Ryan Millar

Email Address: jgibson@naymarklaw.com, david.ryan.millar@gmail.com

PricewaterhouseCoopers Inc., in its capacity as the court-appointed Monitor (in such capacity, the “**Monitor**”) of the Clover CCAA Applicants named in the Amended and Restated Initial Order of The Honourable Mr. Justice Koehnen of the Ontario Superior Court of Justice (Commercial List) made June 22, 2020, hereby gives you notice that the Monitor has reviewed your Request for Amendment or your Proof of Claim against The Clover on Yonge Inc. and/or The Clover on Yonge Limited Partnership, as the case may be, and has revised or rejected your Claim or any part thereof or any information relating thereto, as follows:

Request for Amendment as Submitted (if applicable)	The Proof of Claim as Submitted (if applicable)	The Claim/Information as Accepted
\$ 1,700,140.00	\$0.00	\$ 222,000.00

Reasons for Revision or Disallowance:

Based on the Monitor’s review of your proof of claim and on our discussions regarding your claim, the Monitor has revised the basis of the assessment of your claim, and has valued your claim at \$222,000.00.

If you do not agree with this Notice of Revision or Disallowance, please take notice of the following:

1. **If you dispute this Notice of Revision or Disallowance, you must, no later than 5:00 p.m. (Toronto time) on May 17, 2021, being the Business Day which is fourteen days after the Notice of Revision or Disallowance is sent by the Monitor (see paragraph 11 of the Claims Procedure Order), notify the Monitor by delivery of a Notice of Dispute in accordance with the Claims Procedures Order. The form of Notice of Dispute is enclosed.**
2. **IF YOU DO NOT DELIVER A NOTICE OF DISPUTE WITHIN THE PRESCRIBED TIME PERIOD, THIS NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU AND YOUR CLAIM SHALL BE DEEMED TO BE AS SET OUT IN THIS NOTICE OF REVISION OR DISALLOWANCE.**

DATED at Toronto, this 3rd, day of May 2021.

PRICEWATERHOUSECOOPERS INC., LIT,
SOLELY IN ITS CAPACITY AS THE COURT-APPOINTED MONITOR OF THE CLOVER
CCAA APPLICANTS, AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY



Mica Arlette, LIT
Senior Vice President

NOTICE OF DISPUTE

We hereby give you notice of our intention to dispute the Notice of Revision or Disallowance bearing Acknowledgement Number 1222 and dated _____ issued in respect of our claim.

Reasons for Dispute (attach extra sheets and copies of all supporting documentation if necessary):

Name of Creditor: _____

(Signature of individual completing this Dispute)

Date

(Please print name)

Telephone Number: _____

Email address: _____

Facsimile Number: _____

Full Mailing Address: _____

THIS FORM IS TO BE RETURNED BY PREPAID ORDINARY MAIL, COURIER, PERSONAL DELIVERY OR ELECTRONIC OR DIGITAL TRANSMISSION AND MUST BE RECEIVED NO LATER THAN 5:00 P.M. (TORONTO TIME) ON MAY 17, 2021, BEING THE BUSINESS DAY WHICH IS FOURTEEN DAYS AFTER THE NOTICE OF REVISION OR DISALLOWANCE IS SENT BY THE MONITOR (PURSUANT TO PARAGRAPH 11 OF THE CLAIMS PROCEDURE ORDER) TO:

PricewaterhouseCoopers Inc.
in its capacity as the Monitor of the Clover CCAA Applicants
PwC Tower
18 York Street, Suite 2600
Toronto, ON M5J 0B2

Attention: Tammy Muradova
E-mail: halo.clover@pwc.com

**NOTICE OF REVISION OR DISALLOWANCE OF CLAIM
REFERENCE NUMBER 447**

TO: Ryan Millar

Email Address: jgibson@naymarklaw.com, david.ryan.millar@gmail.com

PricewaterhouseCoopers Inc., in its capacity as the court-appointed receiver (in such capacity, the “**Receiver**”) of 480 Yonge Street Inc. and 480 Yonge Street Limited Partnership (together “**Halo**”) as appointed in the Receivership Order of The Honourable Mr. Justice Koehnen of the Ontario Superior Court of Justice (Commercial List) made March 27, 2020, hereby gives you notice that the Receiver has reviewed your Request for Amendment or your Proof of Claim, as the case may be, and has revised or rejected your Claim or any part thereof or any information relating thereto, as follows:

Request for Amendment as Submitted (if applicable)	The Proof of Claim as Submitted (if applicable)	The Claim/Information as Accepted
\$0.00	\$2,484,334.97	\$205,000.00

Reasons for Revision or Disallowance:

Based on the Receiver’s review of your proof of claim and on our discussions regarding your claim, the Receiver has revised the basis of the assessment of your claim, and has valued your claim at \$205,000.00.

If you do not agree with this Notice of Revision or Disallowance, please take notice of the following:

1. **If you dispute this Notice of Revision or Disallowance, you must, no later than 5:00 p.m. (Toronto time) on May 17, 2021, being the Business Day which is fourteen days after the Notice of Revision or Disallowance is sent by the Receiver (see paragraph 13 of the Halo Claims Procedure Order), notify the Receiver by delivery of a Notice of Dispute in accordance with the Claims Procedure Order. The form of Notice of Dispute is enclosed.**
2. **IF YOU DO NOT DELIVER A NOTICE OF DISPUTE WITHIN THE PRESCRIBED TIME PERIOD, THIS NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU AND YOUR CLAIM SHALL BE DEEMED TO BE AS SET OUT IN THIS NOTICE OF REVISION OR DISALLOWANCE.**

DATED at Toronto, this 3rd day, of May 2021.

PRICEWATERHOUSECOOPERS INC., LIT,
SOLELY IN ITS CAPACITY AS THE COURT-APPOINTED RECEIVER OF HALO
AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY



Mica Arlette, LIT
Senior Vice President

NOTICE OF DISPUTE

We hereby give you notice of our intention to dispute the Notice of Revision or Disallowance bearing Reference Number 447 and dated _____ issued in respect of our claim.

Reasons for Dispute (attach extra sheets and copies of all supporting documentation if necessary):

Name of Creditor: _____

(Signature of individual completing this Dispute)

Date

(Please print name)

Telephone Number: _____

Email address: _____

Facsimile Number: _____

Full Mailing Address: _____

THIS FORM IS TO BE RETURNED BY PREPAID ORDINARY MAIL, COURIER, PERSONAL DELIVERY OR ELECTRONIC OR DIGITAL TRANSMISSION AND MUST BE RECEIVED NO LATER THAN 5:00 P.M. (TORONTO TIME) ON MAY 17, 2021, BEING THE BUSINESS DAY WHICH IS FOURTEEN DAYS AFTER THE NOTICE OF REVISION OR DISALLOWANCE IS SENT BY THE RECEIVER (PURSUANT TO PARAGRAPH 10 OF THE HALO CLAIMS PROCEDURE ORDER) TO:

PricewaterhouseCoopers Inc.
in its capacity as the receiver of Halo
PwC Tower
18 York Street, Suite 2600
Toronto, ON M5J 0B2

Attention: Tammy Muradova
E-mail: halo.clover@pwc.com

Appendix 14

Subject: Fwd: Clover and Halo - discussions regarding YSL bonus
Date: Monday, May 3, 2021 at 4:50:27 PM Eastern Daylight Time
From: Ryan Millar <david.ryan.millar@gmail.com>
To: Ryan Millar <rmillar@Emblemdevcorp.com>

Sent from my iPhone

Begin forwarded message:

From: "Mica Arlette (CA)" <mica.arlette@pwc.com>
Date: May 3, 2021 at 4:29:54 PM EDT
To: Ryan Millar <david.ryan.millar@gmail.com>
Cc: "Tyler Ray (CA - ASR)" <tyler.ray@pwc.com>, "Ailsa Agnew (CA)" <ailsa.b.agnew@pwc.com>
Subject: Clover and Halo - discussions regarding YSL bonus

Ryan,

Further to our separate correspondence to you regarding your claims against Halo and Clover, we note that on March 24, 2021, we were informed by Dave Mann at Cresford that they intend to pay you the bonus connected to the YSL project. In our view this remains an obligation of Cresford/YSL that would be governed by whatever agreements you have with them, and accordingly should be recovered from them.

Regards,
M.

Mica Arlette

PwC | Partner, Deals | Senior Vice President, Corporate Advisory & Restructuring
T: +1 416 814 5834 | C: +1 416 816 4273
Email: mica.arlette@pwc.com
PricewaterhouseCoopers Inc.
PwC Tower, 18 York Street, Suite 2600, Toronto, Ontario, M5J 0B2
www.pwc.com/ca

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TAB B

SCHEDULE "B" – PRIORITY OF CLAIM

71. As a joint employer, YSL failed to pay Millar wages, salaries, commissions or compensation for services rendered during the period beginning on the day that is six months before the date of the initial bankruptcy event. This amount exceeded \$2,000.00. Millar accordingly has a priority claim for \$2,000.00 pursuant to sections 81.3 and 136(1)(d) of the BIA.

EXHIBIT "A" – AMENDED PARTICULARS OF PROOF OF CLAIM

1. THE CLAIMS (together, the **Claims**) as against YG Limited Partnership and YSL Residences Inc. (together, **YSL**) are for:

- (a) \$280,000 in bonuses earned by Mancuso as employment remuneration in 2017, 2018 and 2019; and
- (b) \$62,500 in bonuses earned by Mancuso in 2020; and
- (c) \$87,500, being 50% of the \$175,000 retention bonus earned for remaining with Cresford after January 2020, reduced to reflect contingencies associated with this claim.

2. Total value of the Claims described above is \$430,000 ~~\$517,500~~.

A. OVERVIEW

3. Marco Mancuso (**Mancuso**) was the Director of Construction at Cresford, responsible for overseeing and carrying out the construction of its developments. He was employed in common by the various Cresford companies for which he worked, including YSL, until he left Cresford at the end of November 2020.

4. Mancuso earned significant bonuses for assisting in Cresford projects, which remained unpaid by Cresford. In September 2020, Mancuso and Cresford, including YSL, entered into a settlement agreement, in which Cresford acknowledged and agreed to pay Mancuso's outstanding

bonuses and certain other amounts owing to him. Cresford failed to perform the settlement and pay the amounts owing to Mancuso.

5. As Mancuso's common employer, YSL is jointly and severally liable for his outstanding employment entitlements. Cresford and YSL acknowledged these outstanding amounts in writing in the settlement agreement and they are beyond dispute.

B. MANCUSO'S EMPLOYMENT BY CRESFORD AND DUTIES WITH YSL

6. In March 2015, Cresford hired Mancuso as Project Manager for Construction. Mancuso was promoted to Senior Project Manager in March 2018 and to Director, Construction in July 2019. He served in that role until his departure in November 2020, described below.

7. In January 2015, Mancuso executed an employment agreement (included as **Attachment 1**). Under the employment agreement drafted by Cresford, Mancuso's employer was identified as "Cresford Developments", which is not a legal entity or registered business name. Rather, it is a generic term applying to the entire Cresford group of companies.

8. On January 6, 2020, Mancuso entered into a revised employment agreement with Cresford, which included increased compensation (included as **Attachment 2**). Under that agreement, Mancuso was entitled to:

- (a) a base salary of \$250,000;
- (b) an annual bonus of up to 10% of his base salary; and
- (c) a project bonus of up to 15% of his base salary.

9. During the course of his employment, Mancuso performed work for YSL and for other Cresford companies carrying on real estate business, including the Vox and 33 Yorkville projects (together with YSL, Cresford (Rosedale) Developments Inc. and EDRP, the **Cresford Employers**). Mancuso provided support for the construction of the YSL project and was heavily involved in the due diligence processes carried out throughout 2020 with regard to YSL.

10. Because Mancuso worked for all of the Cresford Employers, he was employed in common by them, including YSL, within the meaning set out in *Downtown Eatery (1993) Ltd. v. Ontario*, [2001 CanLII 8538](#) (Ont. C.A.) and *Nortel Networks Corporation (Re)*, [2016 ONSC 6030](#) because:

- (a) The Cresford Employers were under the common control of the same managers, who acted on behalf of each of the Cresford Employers;
- (b) YSL and each of the relevant project companies directed and exercised effective control over his activities relating to the associated real estate projects;
- (c) Cresford held Mancuso out as a representative of YSL in the course of Mancuso's employment, including during Concord's due diligence process on the YSL project; and
- (d) Some of Mancuso's bonus entitlements involved credits on units purchased from project companies. As described below, Cresford agreed to pay Mancuso's bonuses from the funds of different Cresford Employers, including YSL.

11. Each of the Cresford employers, including YSL, is jointly and severally liable for the employment obligations owed to Mancuso.

12. An integral part of Mancuso's employment compensation were significant bonuses, which included both cash bonuses and credits granted on the purchase of units in Cresford condominium projects. By July 2020, Mancuso had earned significant unpaid bonuses as a result of his employment:

- (a) 2017 earned bonus of \$200,000, which was to be received as a \$200,000 credit against Mancuso's purchase of a unit in the 33 Yorkville project;
- (b) 2018 earned bonuses of \$30,000; and
- (c) 2019 earned bonuses of \$50,000.

13. Mancuso also earned bonuses under his employment agreement for the work performed for the Cresford Employers in the course of 2020. Mancuso had been paid the full 25% bonus in each of the years that he previously worked. He earned the same 25% bonus in 2020 by carrying out extraordinary responsibilities following the financial difficulties suffered by Cresford, contributions that were recognized by Cresford.

14. On January 6, 2020, Daniel C. Casey (**Casey**), the principal of Cresford, called a meeting of five senior employees including Mancuso and granted each of them a retention bonus of \$250,000 on behalf of Cresford. He advised that the intention of this bonus was to reward these senior employees for seeing Cresford through "tough times." By this time, Cresford had begun to experience financial distress. Casey provided Mancuso with a cheque for \$75,000 to satisfy part of that bonus amount. He promised that Cresford would pay the remaining bonus amount of \$175,000 at a later date.

C. THE SETTLEMENT AGREEMENT

15. As detailed below, Mancuso and Cresford entered into a settlement agreement for the payment of overdue amounts owing to him in September 2020.

16. In July 2020, Mancuso continued to work for Cresford, but his outstanding bonuses were unpaid and Cresford was in financial distress. Cresford's Clover, Yorkville and Halo projects were in insolvency proceedings. Cresford was in the process of negotiating the sale of Cresford's remaining real estate properties, including the sale of YSL to a third party buyer, Empire.

17. Mancuso and Cresford discussed arrangements to satisfy Mancuso's employment entitlements, but were unable to reach an agreement. Cresford asked an advisor, Joe Bolla (**Bolla**), to mediate the issue. The parties provided Bolla with information about Mancuso's outstanding entitlements.

18. On July 23, 2020, Bolla sent a without prejudice settlement proposal, for discussion purposes (included as **Attachment 3**). He described the proposal as his determination of "what was fair" in the circumstances, as a "friend of Cresford." The proposal acknowledged the extraordinary efforts made by Mancuso and other employees during this period. Bolla included as a schedule his proposal for how a portion of Mancuso's employment entitlements should be paid.

19. Bolla's settlement proposal acknowledged the outstanding 2017, 2018 and 2019 bonuses owed to Mancuso. The proposal also acknowledged Mancuso's claims for his 2020 bonus, but did not propose to pay these amounts due to financial difficulties.

20. Mancuso and Cresford exchanged without prejudice communications to resolve Mancuso's claims, including his additional claims for his 2020 bonus.

21. On September 8, 2020, Cresford and Mancuso reached a full and final settlement of Mancuso's claims (included as **Attachment 4**). Cresford agreed to pay \$280,000 to Mancuso, which would be paid from the closings of the YSL project, the Clover project, and the conveyance of 69 Hayden Street pursuant to an irrevocable direction provided to Cresford's counsel.

22. The settlement agreement was signed by Daniel Casey on behalf of "[the] Cresford Entities including Limited Partnerships", which included YSL. The settlement agreement specifically carved-out Mancuso's claims for his 2020 bonus, which were to be addressed in further negotiations after the settlement.

23. Mancuso appears never to have signed the agreement but had previously communicated his acceptance of its substantive terms by email (included as **Attachment 5**).¹ The parties acted in accordance with the agreement.

24. On September 14, 2020, pursuant to the settlement agreement, Daniel Casey signed an amended irrevocable direction to YSL's counsel to pay Mancuso the agreed amounts from the proceeds of sale of YSL or any other similar sale (included as **Attachment 6**).

25. As part of the settlement agreement, Cresford gave notice to Mancuso that he would be terminated effective in January 2021. Mancuso continued to work in his role with Cresford during

¹ Mancuso and a colleague, Louie Giannakopoulos, were similarly situated and were jointly negotiating similar settlements with Cresford at the same time. On August 21, 2020, Mr. Giannakopoulos confirmed acceptance of the terms set out in the settlement agreement and an equivalent agreement between Cresford and Mr. Giannakopoulos "on behalf of [Mancuso] and I", in an email to Cresford's representatives and copied to Mancuso.

the intervening period. Among other responsibilities, he provided extensive information to Concord on behalf of YSL during Concord's due diligence process. He was also heavily involved in the sale of the remaining assets of Cresford's Casa 3 project.

26. On November 14, 2020, Mancuso sent an email advising Cresford that he would cease working on November 29, 2020 and claiming payment of the outstanding \$280,000 in bonuses under the settlement agreement and the unpaid 2020 bonuses. Mancuso was ultimately paid his unpaid wages and vacation time up to the date of his departure.

D. FAILURE TO PERFORM THE SETTLEMENT AGREEMENT

27. Under the settlement agreement, YSL and Cresford were required to pay the settlement payments by October 15, 2020. However, YSL and Cresford failed to pay Mancuso's outstanding 2017, 2018 and 2019 bonuses totaling \$280,000.

28. Mancuso sent a series of emails waiving Cresford's delay and extending the deadline for payment, which are included as **Attachment 7**. Despite these extensions, Cresford has failed to pay the \$280,000 in bonuses due under the settlement agreement.

E. BREACH OF CONTRACT

29. Under his Employment Agreement, Mancuso was entitled to the outstanding bonuses that had accrued since 2017 but which remained unpaid. YSL and the other Cresford Employers were contractually required to pay these bonuses, but failed to do so. There is no dispute that the 2017, 2018 and 2019 bonuses were payable and owing, as was acknowledged in the settlement agreement.

30. YSL and the other Cresford Employers have also failed to pay Mancuso's 2020 bonus of \$62,500, equal to 25% of Mancuso's base salary of \$250,000.

31. Finally, YSL and the other Cresford Employers failed to pay the \$175,000 retention bonus that Casey had promised to Mancuso in January 2020, despite Mancuso's extraordinary service to Cresford. PwC reduced by 50% a claim by another employee (Ryan Millar) also promised this bonus in the Clover and Halo proceedings, to account for contingencies associated with that claim. Mancuso's corresponding reduction of this claim by 50% to account for contingencies is without prejudice to his right to claim the full amount of the bonus in other proceedings.

32. Mancuso accordingly submits this claim for these outstanding amounts.

Bankruptcy and Insolvency Act ("Act")

Proof of Claim

(Section 50.1, 81.5, 81.6, Subsections 65.2(4), 81.2(1), 81.3(8), 81.4(8), 102(2), 124(2), 128(1), and Paragraphs 51(1)(e) and 66.14(b) of the Act)

All notices or correspondence regarding this claim must be forwarded to the following address:

Creditor Name:	<u>Marco Mancuso</u>	Telephone:	<u>(416) 768-9994</u>
Address:	<u>c/o James Gibson, Naymark Law</u>	Fax:	<u>(647) 660-5060</u>
	<u>171 John Street, Suite 101,</u>	Email:	<u>jgibson@naymarklaw.com</u>
	<u>Toronto, ON, M5T 1X3</u>		
Account No.:	<u>Nil</u>		

In the matter of the bankruptcy (or the proposal, or the receivership) of YSL Residences Inc. and YG Limited Partnership (*name of debtor*) of the City of Toronto, Ontario (*city and province*) and the claim of Marco Mancuso, creditor.

I, Marco Mancuso (*name of creditor or representative of the creditor*), of City of Toronto, Ontario (*city and province*), do hereby certify:

1. That I am a creditor of the above-named debtor (~~or that I am _____ (*state position or title*) of _____ (*name of creditor*)~~).
2. That I have knowledge of all the circumstances connected with the claim referred to below.
3. That the debtor was, at the date of bankruptcy, (or the date of the receivership, or in the case of a proposal, the date of the notice of intention or of the proposal, if no notice of intention was filed), namely the 30th day of April, 2021, and still is, indebted to the creditor in the sum of **\$517,500.00**, as specified in the statement of account (or affidavit) attached and marked **Schedule "A"**, after deducting any counterclaims to which the debtor is entitled. (The attached statement of account or affidavit must specify the vouchers or other evidence in support of the claim.)
4. (Check and complete appropriate category.)

A. UNSECURED CLAIM (AFFECTED CLAIM) OF \$517,500.00 (other than as a customer contemplated by Section 262 of the Act)
That in respect of this debt, I do not hold any assets of the debtor as security and
(Check appropriate description.)

Regarding the amount of \$515,500.00, I do not claim a right to a priority.

Regarding the amount of \$2,000.00, I claim a right to a priority under Section 136 of the Act.
(Set out on an attached sheet details to support priority claim.)
See **Schedule "B"**.

B. SECURED CLAIM OF \$0.00
That in respect of this debt, I hold assets of the debtor valued at \$ _____ as security, particulars of which are as follows:
(Give full particulars of the security, including the date on which the security was given and the value at which you assess the security, and attach a copy of the security documents.)

C. CONSTRUCTION LIEN CLAIM OF \$0.00
That in respect of this debt I have registered a lien on title to the Debtors' real property in accordance with the *Construction Act* (Ontario), particulars of which are as follows:

(Give full particulars of the lien, including the date on which the lien was registered and the value secured by such lien, and attach a copy of any relevant documents, including any statement of claim).

1. That, to the best of my knowledge, I am (or the above-named creditor is) (or am not or is not) related to the debtor within the meaning of Section 4 of the Act, and have (or has) (or have not or has not) dealt with the debtor in a non-arm's-length manner.
2. That the following are the payments that I have received from, the credits that I have allowed to, and the transfers at undervalue within the meaning of Subsection 2(1) of the Act that I have been privy to or a party to with the debtor within the three months (or, if the creditor and the debtor are related within the meaning of Section 4 of the Act or were not dealing with each other at arm's length, within the 12 months) immediately before the date of the initial bankruptcy event within the meaning of Subsection 2(1) of the Act: (Provide details of payments, credits and transfers at undervalue.)

Dated at City of Toronto, Ontario, this 11th day of June, 2021.

Ryan Millar
Digitally signed by Ryan Millar
DN: c=US, E=rmillar@berridendercorp.com
O=Beridender, OU=Planning and Development, CN=Ryan Millar
Reason: Password
Date: 2021.06.11 13:23:18-04'00'

Witness

Marco Mancuso
Digitally signed by Marco Mancuso
DN: C=CA, E=mancuso@hotmail.com,
CN=Marco Mancuso
Date: 2021.06.11 13:03:43-04'00'

Creditor Authorized Signatory
Marco Mancuso

NOTE: If an affidavit is attached, it must have been made before a person qualified to take affidavits.

WARNINGS: A trustee may, pursuant to Subsection 128(3) of the Act, redeem a security on payment to the secured creditor of the debt or the value of the security as assessed, in a proof of security, by the secured creditor.

Subsection 201(1) of the Act provides severe penalties for making any false claim, proof, declaration or statement of account.

DIRECTIONS FOR COMPLETION OF THIS FORM ARE ON THE REVERSE SIDE

CONDITIONAL CLAIM ADDENDUM

By checking the box below, you are electing for your Claim to be treated as a Conditional Claim (as defined in the Proposal). By electing for your claim to be treated as a Conditional Claim, you are recognizing that:

- a) One or more contractual conditions in your arrangements with the Company were not satisfied as at April 30, 2021 (referred to in the Proposal as "Conditional Claim Conditions");
- b) You are undertaking to complete all Conditional Claim Conditions and provide proof of such completion by no later than the Conditional Claim Completion Deadline; and
- c) You understand that the failure to complete all Conditional Claim Conditions by the Conditional Claim Completion Deadline will result in your Claim being fully, finally and irrevocably disallowed.

I hereby elect for my Claim to be treated as a Conditional Claim:

Creditor Authorized Signatory

TAB A

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
COMMERCIAL LIST

IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY
ACT, R.S.C. 1985, C. B-3, AS AMENDED

IN THE MATTER OF THE NOTICES OF INTENTION TO
MAKE A PROPOSAL OF YG LIMITED PARTNERSHIP
AND YSL RESIDENCES INC.

Applicants

AFFIDAVIT OF MARCO MANCUSO
(Sworn on June 11, 2021)

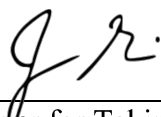
I, Marco Mancuso, of the City of Toronto, Ontario, MAKE OATH AND SAY:

1. I am the creditor, and as such have knowledge of the matters contained in this affidavit. Where my knowledge is based on information from other sources, I state the source of that information and believe the information to be true.
2. I confirm that the information contained in the particulars of claim attached as **Exhibit "A"**, together with the supporting attachments, is accurate and I adopt it for the purposes of this affidavit.

3. I make this affidavit in support of a proof of claim in this proceeding, and for no other or improper purpose.

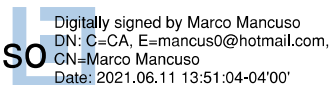
SWORN by videoconference technology by the deponent, located in the City of Toronto, Ontario, before the commissioner, located in the City of Toronto, Ontario in accordance with O. Reg. 431/20, Adminstrating Oath Remotely on June 11, 2021

}



Commissioner for Taking Affidavits
JAMES GIBSON

Marco Mancuso



Digitally signed by Marco Mancuso
DN: C=CA, E=mancuso@hotmail.com,
CN=Marco Mancuso
Date: 2021.06.11 13:51:04-04'00'

MARCO MANCUSO

THIS IS EXHIBIT "A" REFERRED TO
IN THE AFFIDAVIT OF MARCO MANCUSO
SWORN BEFORE ME, THIS 11TH DAY OF JUNE, 2021

A handwritten signature in black ink, appearing to read "J.G.", positioned above a horizontal line.

JAMES GIBSON

A Commissioner Etc.

EXHIBIT “A” – PARTICULARS OF PROOF OF CLAIM
--

1. THE CLAIMS (together, the **Claims**) as against YG Limited Partnership and YSL Residences Inc. (together, **YSL**) are for:

- (a) \$280,000 in bonuses earned by Mancuso as employment remuneration in 2017, 2018 and 2019; and
- (b) \$62,500 in bonuses earned by Mancuso in 2020; and
- (c) the \$175,000 retention bonus earned for remaining with Cresford after January 2020.

2. Total value of the Claims described above is \$517,500.

A. OVERVIEW

3. Marco Mancuso (**Mancuso**) was the Director of Construction at Cresford, responsible for overseeing and carrying out the construction of its developments. He was employed in common by the various Cresford companies for which he worked, including YSL, until he left Cresford at the end of November 2020.

4. Mancuso earned significant bonuses for assisting in Cresford projects, which remained unpaid by Cresford. In September 2020, Mancuso and Cresford, including YSL, entered into a settlement agreement, in which Cresford acknowledged and agreed to pay Mancuso’s outstanding bonuses and certain other amounts owing to him. Cresford failed to perform the settlement and pay the amounts owing to Mancuso.

5. As Mancuso's common employer, YSL is jointly and severally liable for his outstanding employment entitlements. Cresford and YSL acknowledged these outstanding amounts in writing in the settlement agreement and they are beyond dispute.

B. MANCUSO'S EMPLOYMENT BY CRESFORD AND DUTIES WITH YSL

6. In March 2015, Cresford hired Mancuso as Project Manager for Construction. Mancuso was promoted to Senior Project Manager in March 2018 and to Director, Construction in July 2019. He served in that role until his departure in November 2020, described below.

7. In January 2015, Mancuso executed an employment agreement (included as **Attachment 1**). Under the employment agreement drafted by Cresford, Mancuso's employer was identified as "Cresford Developments", which is not a legal entity or registered business name. Rather, it is a generic term applying to the entire Cresford group of companies.

8. On January 6, 2020, Mancuso entered into a revised employment agreement with Cresford, which included increased compensation (included as **Attachment 2**). Under that agreement, Mancuso was entitled to:

- (a) a base salary of \$250,000;
- (b) an annual bonus of up to 10% of his base salary; and
- (c) a project bonus of up to 15% of his base salary.

9. During the course of his employment, Mancuso performed work for YSL and for other Cresford companies carrying on real estate business, including the Vox and 33 Yorkville projects

(together with YSL, Cresford (Rosedale) Developments Inc. and EDRP, the **Cresford Employers**). Mancuso provided support for the construction of the YSL project and was heavily involved in the due diligence processes carried out throughout 2020 with regard to YSL.

10. Because Mancuso worked for all of the Cresford Employers, he was employed in common by them, including YSL, within the meaning set out in *Downtown Eatery (1993) Ltd. v. Ontario*, [2001 CanLII 8538](#) (Ont. C.A.) and *Nortel Networks Corporation (Re)*, [2016 ONSC 6030](#) because:

- (a) The Cresford Employers were under the common control of the same managers, who acted on behalf of each of the Cresford Employers;
- (b) YSL and each of the relevant project companies directed and exercised effective control over his activities relating to the associated real estate projects;
- (c) Cresford held Mancuso out as a representative of YSL in the course of Mancuso's employment, including during Concord's due diligence process on the YSL project; and
- (d) Some of Mancuso's bonus entitlements involved credits on units purchased from project companies. As described below, Cresford agreed to pay Mancuso's bonuses from the funds of different Cresford Employers, including YSL.

11. Each of the Cresford employers, including YSL, is jointly and severally liable for the employment obligations owed to Mancuso.

12. An integral part of Mancuso's employment compensation were significant bonuses, which included both cash bonuses and credits granted on the purchase of units in Cresford condominium projects. By July 2020, Mancuso had earned significant unpaid bonuses as a result of his employment:

- (a) 2017 earned bonus of \$200,000, which was to be received as a \$200,000 credit against Mancuso's purchase of a unit in the 33 Yorkville project;
- (b) 2018 earned bonuses of \$30,000; and
- (c) 2019 earned bonuses of \$50,000.

13. Mancuso also earned bonuses under his employment agreement for the work performed for the Cresford Employers in the course of 2020. Mancuso had been paid the full 25% bonus in each of the years that he previously worked. He earned the same 25% bonus in 2020 by carrying out extraordinary responsibilities following the financial difficulties suffered by Cresford, contributions that were recognized by Cresford.

14. On January 6, 2020, Daniel C. Casey (**Casey**), the principal of Cresford, called a meeting of five senior employees including Mancuso and granted each of them a retention bonus of \$250,000 on behalf of Cresford. He advised that the intention of this bonus was to reward these senior employees for seeing Cresford through "tough times." By this time, Cresford had begun to experience financial distress. Casey provided Mancuso with a cheque for \$75,000 to satisfy part of that bonus amount. He promised that Cresford would pay the remaining bonus amount of \$175,000 at a later date.

C. THE SETTLEMENT AGREEMENT

15. As detailed below, Mancuso and Cresford entered into a settlement agreement for the payment of overdue amounts owing to him in September 2020.

16. In July 2020, Mancuso continued to work for Cresford, but his outstanding bonuses were unpaid and Cresford was in financial distress. Cresford's Clover, Yorkville and Halo projects were in insolvency proceedings. Cresford was in the process of negotiating the sale of Cresford's remaining real estate properties, including the sale of YSL to a third party buyer, Empire.

17. Mancuso and Cresford discussed arrangements to satisfy Mancuso's employment entitlements, but were unable to reach an agreement. Cresford asked an advisor, Joe Bolla (**Bolla**), to mediate the issue. The parties provided Bolla with information about Mancuso's outstanding entitlements.

18. On July 23, 2020, Bolla sent a without prejudice settlement proposal, for discussion purposes (included as **Attachment 3**). He described the proposal as his determination of "what was fair" in the circumstances, as a "friend of Cresford." The proposal acknowledged the extraordinary efforts made by Mancuso and other employees during this period. Bolla included as a schedule his proposal for how a portion of Mancuso's employment entitlements should be paid.

19. Bolla's settlement proposal acknowledged the outstanding 2017, 2018 and 2019 bonuses owed to Mancuso. The proposal also acknowledged Mancuso's claims for his 2020 bonus, but did not propose to pay these amounts due to financial difficulties.

20. Mancuso and Cresford exchanged without prejudice communications to resolve Mancuso's claims, including his additional claims for his 2020 bonus.

21. On September 8, 2020, Cresford and Mancuso reached a full and final settlement of Mancuso's claims (included as **Attachment 4**). Cresford agreed to pay \$280,000 to Mancuso, which would be paid from the closings of the YSL project, the Clover project, and the conveyance of 69 Hayden Street pursuant to an irrevocable direction provided to Cresford's counsel.

22. The settlement agreement was signed by Daniel Casey on behalf of "[the] Cresford Entities including Limited Partnerships", which included YSL. The settlement agreement specifically carved-out Mancuso's claims for his 2020 bonus, which were to be addressed in further negotiations after the settlement.

23. Mancuso appears never to have signed the agreement but had previously communicated his acceptance of its substantive terms by email (included as **Attachment 5**).¹ The parties acted in accordance with the agreement.

24. On September 14, 2020, pursuant to the settlement agreement, Daniel Casey signed an amended irrevocable direction to YSL's counsel to pay Mancuso the agreed amounts from the proceeds of sale of YSL or any other similar sale (included as **Attachment 6**).

25. As part of the settlement agreement, Cresford gave notice to Mancuso that he would be terminated effective in January 2021. Mancuso continued to work in his role with Cresford during

¹ Mancuso and a colleague, Louie Giannakopoulos, were similarly situated and were jointly negotiating similar settlements with Cresford at the same time. On August 21, 2020, Mr. Giannakopoulos confirmed acceptance of the terms set out in the settlement agreement and an equivalent agreement between Cresford and Mr. Giannakopoulos "on behalf of [Mancuso] and I", in an email to Cresford's representatives and copied to Mancuso.

the intervening period. Among other responsibilities, he provided extensive information to Concord on behalf of YSL during Concord's due diligence process. He was also heavily involved in the sale of the remaining assets of Cresford's Casa 3 project.

26. On November 14, 2020, Mancuso sent an email advising Cresford that he would cease working on November 29, 2020 and claiming payment of the outstanding \$280,000 in bonuses under the settlement agreement and the unpaid 2020 bonuses. Mancuso was ultimately paid his unpaid wages and vacation time up to the date of his departure.

D. FAILURE TO PERFORM THE SETTLEMENT AGREEMENT

27. Under the settlement agreement, YSL and Cresford were required to pay the settlement payments by October 15, 2020. However, YSL and Cresford failed to pay Mancuso's outstanding 2017, 2018 and 2019 bonuses totaling \$280,000.

28. Mancuso sent a series of emails waiving Cresford's delay and extending the deadline for payment, which are included as **Attachment 7**. Despite these extensions, Cresford has failed to pay the \$280,000 in bonuses due under the settlement agreement.

E. BREACH OF CONTRACT

29. Under his Employment Agreement, Mancuso was entitled to the outstanding bonuses that had accrued since 2017 but which remained unpaid. YSL and the other Cresford Employers were contractually required to pay these bonuses, but failed to do so. There is no dispute that the 2017, 2018 and 2019 bonuses were payable and owing, as was acknowledged in the settlement agreement.

30. YSL and the other Cresford Employers have also failed to pay Mancuso's 2020 bonus of \$62,500, equal to 25% of Mancuso's base salary of \$250,000.

31. Finally, YSL and the other Cresford Employers failed to pay the \$175,000 retention bonus that Casey had promised to Mancuso in January 2020, despite Mancuso's extraordinary service to Cresford.

32. Mancuso accordingly submits this claim for these outstanding amounts.

Attachment 1



Marco Mancuso

January 22, 2015

RE: Employment Agreement

Dear Marco,

It is with pleasure that Cresford Developments would like to extend a full-time offer of employment to you based on the following:

- Start Date:** February 23, 2015
- Title:** Project Manager
- Salary:** \$120,000 CAD per annum, less statutory deductions, paid semi-monthly via direct deposit.
- Car Allowance:** All inclusive of costs, \$800 monthly, paid monthly, in addition to your base salary. Parking is expensed separately.
- Bonus:** You will be eligible to receive a bonus of up to 10% of your base salary based upon personal performance. The bonus for any given year is paid out in August of the following year. You will be eligible to receive an additional bonus of up to 10% of your base salary based on project performance. The bonus is accrued annually and paid out upon successful registration of the project. All bonuses are prorated based on your start date.
- Benefits:** You will be eligible to participate in the company benefits program after successful completion of your three (3) month probationary period (see details below).
- Vacation:** Three (3) weeks of vacation will be provided per year. All vacation is prorated based on your start date.
- Additional Expenses:** A company cell phone will be provided. Additional normal and reasonable approved business expenses will be reimbursed on a monthly basis as per company policy.
- Probationary Period:** The first three (3) months of your employment is deemed to be probationary. It is understood and agreed that the Employer will be the sole judge of the Employee's suitability. Therefore, during this period, the Employer may terminate the employment without cause or any form of termination payment as per the Ontario Employment Standards Act, 2000.

Please review the terms of this offer carefully and obtain any advice you require. If you agree to the arrangement described herein, please sign this letter and return it by **Friday, January 23, 2015** to indicate your acceptance.

Marco, we are truly excited about your interest in joining the Cresford Developments team and we are confident you will find your role here rewarding.

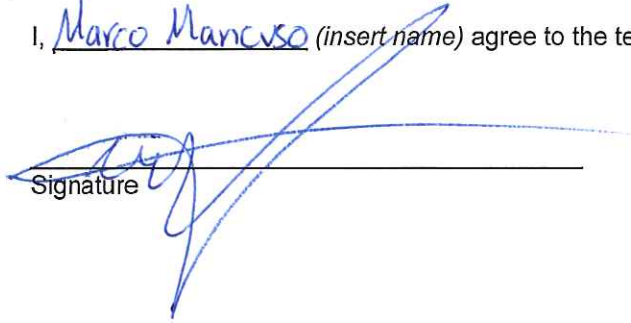
Sincerely,



Louie Giannakopoulos
Director, Construction

ACKNOWLEDGEMENT:

I, Marco Mancuso (insert name) agree to the terms and conditions of employment outlined herein.


Signature

January 29/15
Date

Attachment 2

Jan 6th, 2020

Marco Mancuso
381 Margueretta Street
Toronto ON M6H 3S6

RE: Revision to Employment Agreement

Dear Mr. Mancuso

Cresford (Rosedale) Developments Inc. (the "Employer" or "Cresford") would like to revise your existing employment agreement dated January 22, 2015 with the following amendments:

- Salary
 - Effective May 2, 2016, your salary was increased from \$120,000 CAD per annum to \$140,000 CAD per annum
 - Effective March 2, 2017, your salary was increased from \$140,000 CAD to \$150,000
 - Effective March 1 2018, your salary was increased from \$150,000 CAD to \$200,000
- Annual Bonus
 - You will be eligible to receive an annual bonus of 10% of your salary based upon your personal performance.
 - If it is determined that you are entitled to a bonus based on your performance, the bonus will be paid out in August of the following year. For example, if you are entitled to a bonus based on your performance for the year ended December 31, 2016, you will receive the bonus in August 2017.
 - The salary used in calculating your annual bonus will take into consideration of any salary changes during the year.
 - The annual bonus is prorated based on your employment period.
- Project Bonus
 - You will be eligible to receive a project bonus which is accrued annually and is paid out every 3 years based on your start date anniversary. For example, your project bonus for the period from March 2, 2018 to March 1, 2021 will be paid out in the March 15th, 2021 semi-monthly payroll.
 - The future project bonus will be accrued based on annual performance review in February of each year and annual accrued amount would be up to 15% of your salary based on the employee's performance review.
 - The project bonus is calculated as follows for the period from March 2 2015 to March 1 2018.
 - For the service period from March 2, 2015 to March 1, 2016, the project bonus accrual amount is \$12,000, which is calculated based on 10% of your salary of \$120,000.
 - For the service period effective March 2, 2016, the project bonus accrues at a rate of 15% of your annual salary.
 - For the service period from March 2, 2016 to March 1, 2017, the project bonus accrual amount is \$21,000, which is calculated based on 15% of your salary of \$140,000.
 - For the service period from March 2, 2017 to March 1, 2018, the project bonus accrual amount is \$22,500, which is calculated based on 15% of your salary of \$150,000.
 - The salary to be used in calculating your annual bonus will take into consideration of any salary changes during the year.

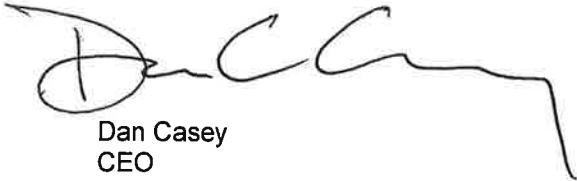
Effective January 1, 2020 my salary increase to \$250,000

[Handwritten signature]
Dec

This revision of your employment agreement forms a part of the employment agreement as an addendum to your existing employment agreement.

Please review the revised terms carefully and obtain any advice you require. If you agree to the arrangement described herein, please sign both copies of this letter and return it by Jan 9th, 2020 to indicate your acceptance. The other copy you may keep for your own records.

Sincerely,



Dan Casey
CEO

ACKNOWLEDGEMENT:

I, Marco Mancuso (insert name) agree to the revised terms and conditions of employment outlined herein.

Signature 

January 7, 2019
Date

Attachment 3

Fw: From Brother iPrint&Scan

From: Marco Mancuso <mancus0@hotmail.com>
To: Daniel Naymark <dnaymark@naymarklaw.com>

Sat, Nov 7, 2020 at 11:30 AM EST (GMT-05:00)

From: Marco Mancuso <marco@cresbuild.com>
Sent: November 7, 2020 11:29 AM
To: Marco Mancuso <mancus0@hotmail.com>
Subject: FW: From Brother iPrint&Scan

Marco Mancuso PMP, GSC, LEED AP

Director, Construction

Cresbuild

59 Hayden Street, Suite 200 | Toronto, ON | M4Y 0E7

T: 416.971.7557 ext. 281 | C: 416.452.0387 | E: marco@cresbuild.com

www.cresford.com/cresbuild

From: Joe Bolla <joebolla@gmail.com>
Sent: July 23, 2020 2:26 PM
To: Marco Mancuso <marco@cresbuild.com>
Subject: From Brother iPrint&Scan

Here is the document. I hope you can read it. I am available tomorrow to answer questions or discuss my proposal.

Regards, Joe

From Brother iPrint&Scan

This communication is intended only for the party to whom it is addressed, and may contain information which is privileged or confidential. Any other delivery, distribution, copying or disclosure is strictly prohibited and is not a waiver of privilege or confidentiality. If you have received this telecommunication in error, please notify the sender immediately by return electronic mail and destroy the message.

Attachments

- 12328.jpg
- 23142.jpg
- 28582.jpg
- 32826.jpg

CONFIDENTIAL

Settlement Proposal (Without Prejudice)

My Role: Facilitate the settlement of certain employees' compensation. I offer this proposal as a friend of Cresford. It is intended to be for "discussion purposes" only.

Objective: Determine "what is fair" based on consideration of the circumstances and the facts, using my judgement and experience.

Circumstances:

- a) **Environment:** Covid-19 has impacted the viability of many small businesses. Millions of employees have been temporarily laid off and are receiving government subsidies. Many employees have been and will be terminated. Some companies are and will go out of business. These are very uncertain times. Unemployment has increased significantly.
- b) **Current Cresford Situation:** The banks stopped funding Cresford's projects in January, 2020. Since then, Cresford has received no corporate cash inflows to pay for its operations. In March 2020, three of Cresford's four projects were placed into receivership because they were not economically viable. Cresford obtained a loan secured by other assets (including 59 Hayden, 69 Hayden, CASA III townhomes, 357 ½ Yonge and 357A Yonge St) to provide some cash. The amount of debt secured by the other assets is \$56.5 million. In addition, the amount of debt secured by YSL is \$209 million. The monthly debt service of the total debt of \$265.5 million is \$1.1 million. The shareholder has personally contributed cash to fund this monthly interest, subsidize payroll and pay operating costs (including certain accounts payable). Neither Cresford nor the shareholder has cash.
- c) **Future Cresford Situation:** Cresford expects to receive some cash from the sale of other assets after repayment of the secured debt, from Clover after the project is registered and closed in a year and from the sale of YSL on closing and after the project is registered and closed in 5 years. Both Halo and 33 Yorkville are in the process of sale by the receiver. It is unknown whether Cresford will receive any cash from the sale proceeds of these projects.
- d) **Sale of YSL:** On July 17, 2020 an APS was executed for the sale of YSL. Due diligence began on July 21, 2020. The purchaser has 10 business days to complete its due diligence. During the due diligence period, the purchaser will decide whether it wants to hire some of Cresford's employees. Cresford will actively promote the hiring of its employees by the purchaser.

Purchase of Condominiums:

Certain employees arranged for their bonuses to be paid by credits towards the purchase of condominiums instead of cash. The projects in which the employees purchased the condominium units are now in receivership because they are not economically viable. This situation has created a complicated compensation issue. The employees converted their bonuses into investments which are subject to loss.

Two questions arise from bonuses being paid by credits towards the purchase of condominiums:

- 1) Has the bonus been paid? In my opinion, the bonus is not paid until the purchase of the condominium closes. So, the obligation to pay the bonus remains outstanding.
- 2) What is the status of the current fair market appreciation of the condominium? In my opinion, the fair market appreciation can only be determined when the condominium unit closes. Any apparent appreciation now is not relevant because the project is not economically viable and it is under construction. So, the purchase price of the condominiums must be increased in order for the project to be completed. After the condominium units close, the true fair market appreciation or loss can be determined. In any case, the employee converted payment of the bonus into an investment which is subject to loss.

Employee compensation does not include any loss in fair market appreciation.

Finally, bonuses are taxable transactions whether they are paid by credits to the purchase of condominium units or by cash.

Facts:

- a) The employees have made a major contribution to the development activities of Cresford. They demonstrated a results driven approach which made a difference to the outcome of many projects. In addition, during Cresford's struggle to survive and sell assets, the employees performed admirably in working with banks, receivers, construction managers, trades, suppliers and prospective purchasers. They are very good at what they do and their efforts are appreciated.
- b) Cresford is insolvent.
- c) Cresford's projects are not economically viable because of two factors:
 - i) Too many condominium units, more than the financing presale requirement, were sold at introductory prices. While selling prices increased significantly, there were not enough unsold units to absorb cost increases.
 - ii) Construction costs increased significantly primarily in response to US tariffs. The cost overruns were in excess of \$150 million.
- d) Employees are frustrated by Cresford's lack of communication. Cresford is "shell shocked" by the disintegration of its business.
- e) Payment for employee compensation must be funded by future cash proceeds from the sale of assets.

- f) Severance payments are intended to bridge employee compensation from termination of employment at Cresford to securing employment at a new company. The severance payments are "clawed back" by compensation received from the new employer during the severance period.
- g) The employees received a \$10,000 Christmas bonus in December 2019. They also received a \$65,000 bonus in early 2020. This bonus was a partial payment of an amount to be paid to the employees if Cresford remained a going concern in a year's time (i.e. at the end of 2020). In March 2020, when the projects were placed into receivership, Cresford was no longer a going concern. So, one quarter of the retention bonus was owed and paid.
- h) The employees have continued to receive their full salary to date. Other employees were temporarily laid off and some were terminated during this period. Their salaries were subsidized by contributions of cash by the shareholder in recognition of their work and importance to the organization.
- i) The employees are now represented by a lawyer. Two employees have served notice on Cresford claiming that they were constructively dismissed. This is a complicated legal issue.

Principles of Settlement:

- 1) Cresford is insolvent. Therefore, payment of the bonuses must be funded by future asset sales.
- 2) The impact of Covid-19 has been devastating for companies and employees. Many employees are unemployed and companies are struggling to survive. For those employees who have remained employed by companies still in business, many had to agree to reductions in their compensation because of the employers' ability to pay.
- 3) The employees' commitment to Cresford and their excellent performance deserve recognition.
- 4) Cresford must assist employees in securing new employment.
- 5) Given Cresford's limited access to cash, salary payments commencing August 1, 2020 should reduce the severance period. The impact of the shortened severance period to the employee should be minimal because it is expected that they will all have employment in a few months.

Conclusion:

Refer to Schedule A for my suggestion to resolve the outstanding compensation issues. I expect both the company and the employees will disagree with parts of my proposal. Hopefully, it will reopen the channel of communication and generate productive discussion.

Both Cresford and the employees have sacrificed much and there are limits to what can be done to resolve the issues. Compromise is necessary.

Schedule A: Marco Mancuso

Payment of Outstanding Bonuses:

- 1) 2017 bonus of \$200,000—this bonus was paid by a credit to the purchase price of a 33 Yorkville unit. The purchaser of the 33 Yorkville project will disclaim all 33 Yorkville condo purchase agreements. The bonus will be paid in 2 parts: \$100,000 from the closing of YSL by September 30, 2020 and \$100,000 from the proceeds of the completion and closing of the Clover project, expected to occur in August 2021.
- 2) 2018 bonus of \$30,000—this bonus will be paid from the closing of YSL by September 30, 2020.
- 3) 2019 bonus of \$50,000—this bonus will be paid from the proceeds of the conveyance of 69 Hayden which is expected to occur in September, 2020.
- 4) \$175,000 retention bonus and 2020 bonus of 25 % of base salary---\$75,000 (Christmas bonus of \$10,000 and \$65,000 to maintain Cresford as a going concern) has been paid. Cresford ceased to be a going concern in March, 2020. So, 25% of the gross retention bonus has been earned and paid. The base salary has been paid in 2020 because the shareholder personally contributed cash to fund your salary. Given the general economic environment and the insolvency of Cresford, no bonuses on the 2020 base salary can be paid.
- 5) Severance payments: Cresford to pay severance for 4 months commencing August 1, 2020, subject to clawback.

Additional source of income:

Potential short term consulting contract with purchaser of YSL.

Attachment 4

Settlement – Marco Mancuso

This is in full and final settlement of all salary, benefits and bonuses or other claims by Marco Mancuso against any of the Cresford Entities including Limited Partnerships and Dan Casey; with the exception of the items indicated in paragraph 6 below.

IN CONSIDERATION for this final settlement, Marco Mancuso shall receive \$280,000.00 plus continuance of his salary for five months commencing August 1, 2020, including benefits. Should Marco Mancuso obtain other employment or fees for consultation subsequent to August 1, 2020, the income received will reduce the monthly severance payments from the Cresford Entities (see footnote 1).

1. The \$280,000.00 shall be paid as follows:
 - a) \$180,000.00 to be paid from the proceeds on the earlier of (a) the closing of the YSL project or (b) the closing of the 69 Hayden street conveyance to the City of Toronto; which are both expected to occur by September 30, 2020.
 - b) \$100,000.00 to be paid from the proceeds of the closing of the Clover Project which is expected to occur in August 2021.
2. Cresford shall sign irrevocable directions to its lawyers to pay the above noted amounts in points 1(a) and 1(b) from the said proceeds, in the forms attached as Schedule "A". The undersigned shall provide Marco Mancuso with proof that the direction has been signed and delivered to council and confirmation of receipt by council. In the event that the undersigned changes council Marco Mancuso shall be notified by the undersigned and the undersigned will provide a replacement irrevocable authorization and direction to the replacement council.
3. Cresford shall obtain all approvals from the Court and its officers (including monitors and receivers) in any insolvency proceedings involving Cresford entities that are necessary to give effect to the commitments in paragraphs 1 (b).
4. In the event the payment in paragraph 1(a) is not paid in full by October 15, 2020 and the delay has not been waived in writing by Marco Mancuso, this agreement shall be null and void.
5. This agreement constitutes notice of the termination of Marco Mancuso's employment effective January 1, 2021 in which he shall receive continuance of his salary and benefits for five months commencing August 1, 2020.
6. Cresford agrees to continue discussions in resolving the outstanding items of: (a) pay in lieu of unused vacation, (b) severance commencement date and (c) 2020 accrued bonuses. These items are to be addressed after the execution of this settlement.

All of the above payments are subject to the statutory deductions.

Dated at Toronto, this ^{8th} day of September, 2020.



Dan Casey on behalf of Cresford Entities
and Limited Partnerships

Marco Mancuso

¹ Including: Cresford Real Estate Corporation, Cresford (Rosedale) Developments Inc., East Downtown Redevelopment Partnership, 33 Yorkville Residences Inc., 33 Yorkville Residences Limited Partnership, 480 Yonge Street Inc., 480 Yonge Street Limited Partnership, The Clover on Yonge Inc., The Clover on Yonge Limited Partnership, YSL Residences Inc., YG Limited Partnership, 9615334 Canada Inc., 50 Charles Street Limited, 69 Hayden Street Limited, 11 Gloucester Street Inc., and Cresford Holdings Ltd. (collectively, "Cresford")

IRREVOCABLE AUTHORIZATION AND DIRECTION

To: Dale & Lessmann LLP
Re: Sale of Clover Project to Concord Adex

You are hereby irrevocably authorized, instructed and directed to pay out of funds received from Concord Adex in connection with the sale of the clover project in the sum of \$100,000 to Marco Mancuso (cell 416-452-0387, email: mancuso0@hotmail.com) and this shall be your good and sufficient authority for so doing.

This direction shall not be revoked without the consent of the beneficiary of this Direction, Marco Mancuso. A fax, photocopy or scanned copy delivered by such other electronic means of this signed Direction shall be effective as an original.

In the event that the undersigned changes council Marco Mancuso shall be notified by the undersigned and the undersigned will provide a replacement irrevocable authorization and direction to the replacement council. The undersigned shall provide proof that that the direction has been executed and delivered to Dale and Lessmann and confirmation of receipt by Dale and Lessmann.

Dated at Toronto, Ontario this 8th day of September, 2020.

Cresford (Rosedale) Developments Inc. NTD: Dale and Lessmann to confirm that this is the registered and beneficial owner. If it is not, then Dale and Lessman to insert the proper company.


Per: Dan Casey
President

Acknowledged by Dale & Lessmann LLP

Per:

IRREVOCABLE AUTHORIZATION AND DIRECTION

To: Nelligan O'Brien Payne LLP
Re: Sale of YSL Project to Empire (Waterwave) Ltd.


You are hereby irrevocably authorized, instructed and directed to pay out of funds received from Empire (Water Wave) Inc. or any successor or assign on the sale of the above noted Project the sum of \$180,000 to Marco Mancuso (cell 416-452-0387, email: mancuso0@hotmail.com) and this shall be your good and sufficient authority for so doing.

This direction shall not be revoked without the consent of the beneficiary of this Direction, Marco Mancuso. A fax, photocopy or scanned copy delivered by such other electronic means of this signed Direction shall be effective as an original.

In the event that the undersigned changes council Marco Mancuso shall be notified by the undersigned and the undersigned will provide a replacement irrevocable authorization and direction to the replacement council. The undersigned shall provide proof that the direction has been executed and delivered to Nelligan O'Brien and Payne LLP and confirmation of receipt by Nelligan O'Brien and Payne LLP.

Dated at Toronto, Ontario this 8th day of September, 2020.

Cresford (Rosedale) Developments Inc. NTD: Nelligan O'Brien and Payne to confirm that this is the registered and beneficial owner. If it is not, then Nelligan O'Brien and Payne to insert the proper company.


Per: Dan Casey
President

Acknowledged by Nelligan O'Brien Payne LLP

Per:

Attachment 5

Fw: Revised Agreements

From: Louie Giannakopoulos <lgiannakopoulos@cresbuild.com>
Sent: August 21, 2020 10:37 AM
To: Dave Mann <dmann@cresford.com>
Cc: Dan Casey <dcasey@cresford.com>; Marco Mancuso <marco@cresbuild.com>
Subject: RE: Revised Agreements

Morning Dave,

Without prejudice and as per our discussions with Dan, on behalf off Marco and I we agreed to proceed with the recent settlements issued to us. Again we are very appreciatively of what has been issued to date. We agree that we will leave the remaining couple of items to be discussed afterwards with Joe. As stated to Dan we want to continue maintaining our focus on the closing of YSL, Park Conveyance, Casa 3 Completion etc. Please proceed with the legal documents and directions through Nillegan.

Sincerely

Louie Giannakopoulos

Vice President, Construction

Cresbuild

59 Hayden Street, Suite 200 | Toronto, ON | M4Y 0E7

T: 416.971.7557 ext. 256 | C: 416.786.1906 | E: lgiannakopoulos@cresbuild.com

www.cresford.com/cresbuild

Marco Mancuso PMP, GSC, LEED AP

Director, Construction

Cresbuild

59 Hayden Street, Suite 200 | Toronto, ON | M4Y 0E7

T: 416.971.7557 ext. 281 | C: 416.452.0387 | E: marco@cresbuild.com

www.cresford.com/cresbuild

From: Dave Mann <dmann@cresford.com>

Sent: August 20, 2020 12:08 PM

To: Louie Giannakopoulos <lgiannakopoulos@cresbuild.com>; Marco Mancuso <marco@cresbuild.com>

Cc: Dan Casey <dcasey@cresford.com>; 'Joe Bolla' <joebolla@gmail.com>

Subject: RE: Revised Agreements

WITHOUT PREJUDICE and CONFIDENTIAL

Hi Louie and Marco,

I just wanted to elaborate on Joe's email to you from yesterday. All projects were put on hold by the Banks in January meaning that all financing stopped. A key component of the financing draws are fees that are paid to Cresford Rosedale which are used to pay salaries and bonuses, along with other overhead costs. Monthly fee revenue was about \$1,000,000; it is now zero. Our payroll costs have declined significantly and a portion of salaries have been reimbursed by PWC which helps a little. Three projects have gone into receivership and YSL had its funding cut, forcing us to put it on the market.

To enable us to make payroll and keep Cresford alive, we have had to borrow money at high interest rates. We are being forced to sell all our Hayden Street assets.

We appreciate your continuing on with us in these difficult times. Joe has worked hard in coming up with the settlement proposals and I thought that there was agreement on those. Joe did mention that there were discussions with the two of you on severance start dates, vacation pay and 2020 bonuses but there was no agreement. As I mentioned to you, Joe is taking a break from Cresford to deal with his personal issues. We expect to be able to talk to him about this in a week or two and at that time, we can negotiate the three items. The settlements provide for a significant amount of income for both of you. Dan and I are also promoting your services with Empire.

You are also expecting Directions to be prepared to give you security on the payments. Those directions are being done by Nelligan and I hope to have them today or tomorrow.

Dan has instructed me to communicate this with you and go with the agreements as recommended by Joe. Let's get these signed up and then we can deal with the open items before the end of August.

Thanks

From: Louie Giannakopoulos

Sent: August 19, 2020 2:36 PM

To: Dave Mann <dmann@cresford.com>

Cc: Dan Casey <dcasey@cresford.com>; Marco Mancuso <marco@cresbuild.com>

Subject: RE: Revised Agreements

Dave,

Marco and I reached out to Dan to discuss our agreement and concerns. We agreed on the following items to be added to our Agreements. Dan will reach out to you to further discuss:

1. Severance Period: To commence after the YSL closing commencing on October 1, 2020 based on a period of:
 - a. Louie: 6 months
 - b. Marco: 5 months
2. Unused Vacation: Paid as a lump sum amount on October 1st, 2020
 - a. Louie: 20 days from 2020 = Total 20 days
 - b. Marco: 6 days carried over from 2019 + 20 days from 2020 = Total 26 days
3. Remaining Bonuses:
 - a. \$ 175,000 Tumultuous Times: Agreed to remove
 - b. 2020 Bonus, 25% of Base Salary:
 - i. Agreed to add based on the working period of January 1st, 2020 to September 30th, 2020 (9 months)
 - ii. To be paid on the closing of YSL
 1. Louie: \$ 56,250
 2. Marco: \$ 46,875
3. Securing Payments: How do you guarantee/secure payments based on closings of YSL and especially Clover

Louie Giannakopoulos

Vice President, Construction

Cresbuild

59 Hayden Street, Suite 200 | Toronto, ON | M4Y 0E7

T: 416.971.7557 ext. 256 | C: 416.786.1906 | E: lgiannakopoulos@cresbuild.com

www.cresford.com/cresbuild

From: Marco Mancuso <marco@cresbuild.com>

Sent: August 19, 2020 12:49 PM

To: Dave Mann <dmann@cresford.com>; Louie Giannakopoulos <lgiannakopoulos@cresbuild.com>

Cc: Joe Bolla <joebolla@gmail.com>; Dan Casey <dcasey@cresford.com>

Subject: RE: Agreement

Dave,

Below are the items that were discussed with Joe. Joe also spoke with Dan and Dan called us to confirm that he also agrees.

1. For Louie and Marco Severance period to commence after the YSL closing. To make it Easy, **Severance period to commence October 1, 2020.**
2. Marco and Louie to be paid for unused vacation time (please confirm when these unused vacation days will be paid).
 - a. **Marco** – 6 days carried over from 2019 + 20 days from 2020 = **total 26 days**
 - b. **Louie** – 20 days from 2020 = **total 20 days**
3. We agreed with Joe that our 2020 25% of base salary bonus and the \$175,000 “tough times” bonus would be added as a line item on the memo to be negotiated at a later date. We wanted to help speed up the process of getting something in writing and then negotiate/discuss the 2020 bonuses after the primary agreement was signed

4. We would need to confirm prior to signing anything that the method above constitutes a secured way of payment.
How is the YSL future payment and the Clover future payment guaranteed?

Please confirm with Joe if required as this was exactly what was discussed.

Thanks,

Marco Mancuso PMP, GSC, LEED AP

Director, Construction

Cresbuild

59 Hayden Street, Suite 200 | Toronto, ON | M4Y 0E7

T: 416.971.7557 ext. 281 | C: 416.452.0387 | E: marco@cresbuild.com

www.cresford.com/cresbuild

From: Dave Mann <dmann@cresford.com>

Sent: August 19, 2020 11:20 AM

To: Marco Mancuso <marco@cresbuild.com>; Louie Giannakopoulos <lgiannakopoulos@cresbuild.com>

Subject: RE: Agreement

Hi guys,

We heard from Joe today and as you may know, he is tending to his wife. She had some major injuries from her car accident and has had a bit of a relapse. Joe is off the grid for a bit as he is looking after her.

Can you summarize the differences?

Thx

From: Marco Mancuso

Sent: August 19, 2020 11:08 AM

To: Dave Mann <dmann@cresford.com>

Cc: Dan Casey <dcasey@cresford.com>; Joe Bolla <joebolla@gmail.com>

Subject: Re: Agreement

Hi Dave can you please speak with Joe. It's almost there but it is not exactly what was discussed with Joe.

I'll give you a call later with Louie if required

Thanks

Marco Mancuso

Cresford Developments

416-452-0387

On Aug 19, 2020, at 10:49 AM, Dave Mann <dmann@cresford.com> wrote:

Hi Marco,

Attached is the agreement drafted by Nelligan as agreed between you and Joe. We will send the Directions when completed by the lawyers.

Thanks

From: Cathy Alderson [<mailto:Cathy.Alderson@nelliganlaw.ca>]

Sent: August 18, 2020 10:59 AM

To: Dave Mann <dmann@cresford.com>

Subject:

<Settlement - Marco Mancuso.docx>

This communication is intended only for the party to whom it is addressed, and may contain information which is privileged or confidential. Any other delivery, distribution, copying or disclosure is strictly prohibited and is not a waiver of privilege or confidentiality. If you have received this telecommunication in error, please notify the sender immediately by return electronic mail and destroy the message.

Attachment 6

IRREVOCABLE AUTHORIZATION AND DIRECTION

To: Nelligan O'Brien Payne LLP

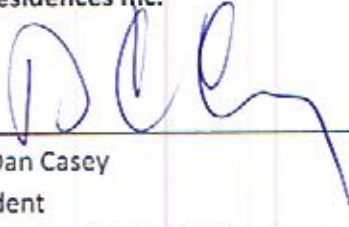
Re: Sale of YSL Project to Empire (Waterwave) Ltd.

You are hereby irrevocably authorized, instructed and directed to pay out of funds received from Empire (Water Wave) Inc. on the sale of the above noted Project the sum of \$180,000 to Marco Mancuso and this shall be your good and sufficient authority for so doing. Such payment shall be reduced on account of any monies paid to Marco Mancuso by or at the direction of Cresford (Rosedale) Developments Inc. pursuant to similar directions on transactions that may close at an earlier date.

This direction shall not be revoked without the consent of the beneficiary of this Direction, Marco Mancuso. A fax, photocopy or scanned copy delivered by such other electronic means of this signed Direction shall be effective as an original.

Dated at Toronto, Ontario this 14th day of September, 2020.

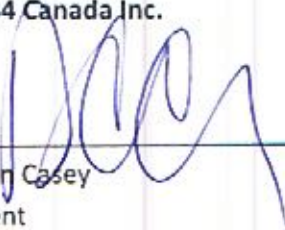
YSL Residences Inc.



Per: Dan Casey
President

I have authority to bind the corporation

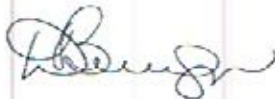
**YG Limited Partnership by its General Partner
9615334 Canada Inc.**



Per: Dan Casey
President

I have authority to bind the corporation

Acknowledged by Nelligan O'Brien Payne LLP



Per: Debbie Bellinger

IRREVOCABLE AUTHORIZATION AND DIRECTION


To: Dale & Lessmann LLP
AND
Any other counsel acting for any Cresford entity on the sale of the Clover Project

Re: Sale of Clover Project

You are hereby irrevocably authorized, instructed and directed to pay funds to Marco Mancuso in accordance with the enclosed irrevocable direction, regardless of whether:

1. A Cresford entity other than the one indicated is the recipient, payee or beneficial owner of funds payable as a result of the sale of the Clover project; or
2. A firm other than Dale & Lessman LLP acts for a Cresford entity in respect of the sale of the Clover project for any reason.

Dated at Toronto, Ontario this 1st day of September, 2020.



Per: Dan Casey
President

IRREVOCABLE AUTHORIZATION AND DIRECTION

To: Nelligan O'Brien Payne LLP
AND
Any other counsel acting for any Cresford entity on the sale of the YSL Project

Re: Sale of YSL Project to Empire (Waterwave) Ltd.

You are hereby irrevocably authorized, instructed and directed to pay funds to Marco Mancuso in accordance with the enclosed irrevocable direction, regardless of whether:

1. A Cresford entity other than the one indicated is the recipient, payee or beneficial owner of funds payable as a result of the sale of the YSL project; or
2. A firm other than Nelligan O'Brien Payne LLP acts for a Cresford entity in respect of the sale of the YSL project for any reason.

Dated at Toronto, Ontario this 4 day of September, 2020.



Per: Dan Casey
President

Attachment 7

From: Marco Mancuso <mancus0@hotmail.com>
Sent: May 20, 2021 11:23 AM
To: Dcasey@cresford.com <Dcasey@cresford.com>; Dmann@cresford.com <Dmann@cresford.com>
Subject: Fw: Settlement agreement extension #6 - Marco Mancuso

Dan,

With respect to my settlement agreement:

Cresford is in breach of paragraph 1(a) because it has said it cannot or will not direct funds to me from the closing of 69 Hayden Street. I don't waive that breach but it will be moot assuming I am paid from the closing of the YSL project so I will forbear for the moment on taking any steps to address the breach in the expectation that will occur. Please provide any updated irrevocable directions necessary given that the project is no longer being sold to Empire as it was when the original directions were signed.

The first payment of \$180,000 under paragraph 1(a) of my agreement was due by October 15, 2020 pursuant to paragraph 4 of the agreement. I previously extended that deadline to November 15, 2020. I then extended the date

again to December 15, 2020 and again extended the date to February 15, 2021. I then extended the date again to March 19, 2021. I then extended the date again until April 19, 2021. I then extended the date to May 26, 2021.

Please take this email as notice under that I further extend the deadline to June 30th, 2021.

Thank you,

From: Marco Mancuso <mancus0@hotmail.com>
Sent: April 13, 2021 10:59 AM
To: Dcasey@cresford.com <Dcasey@cresford.com>; Dmann@cresford.com <Dmann@cresford.com>
Subject: Re: Settlement agreement extension #6 - Marco Mancuso

Dan,

With respect to my settlement agreement:

Cresford is in breach of paragraph 1(a) because it has said it cannot or will not direct funds to me from the closing of 69 Hayden Street. I don't waive that breach but it will be moot assuming I am paid from the closing of the YSL project so I will forbear for the moment on taking any steps to address the breach in the expectation that will occur. Please provide any updated irrevocable directions necessary given that the project is no longer being sold to Empire as it was when the original directions were signed.

The first payment of \$180,000 under paragraph 1(a) of my agreement was due by October 15, 2020 pursuant to paragraph 4 of the agreement. I previously extended that deadline to November 15, 2020. I then extended the date again to December 15, 2020 and again extended the date to February 15, 2021. I then extended the date again to March 19, 2021. I then extended the date again until April 19, 2021. Please take this email as notice under that I further extend the deadline to May 26th, 2021.

Thank you,

From: Marco Mancuso <mancus0@hotmail.com>
Sent: March 15, 2021 4:15 PM
To: Dcasey@cresford.com <Dcasey@cresford.com>; Dmann@cresford.com <Dmann@cresford.com>
Subject: Fw: Settlement agreement extension #5 - Marco Mancuso

Dan,

With respect to my settlement agreement:

Cresford is in breach of paragraph 1(a) because it has said it cannot or will not direct funds to me from the closing of 69 Hayden Street. I don't waive that breach but it will be moot assuming I am paid from the closing of the YSL project so I will forbear for the moment on taking any steps to address the breach in the expectation that will occur. Please provide any updated irrevocable directions necessary given that the project is no longer being sold to Empire as it was when the original directions were signed.

The first payment of \$180,000 under paragraph 1(a) of my agreement was due by October 15, 2020 pursuant to paragraph 4 of the agreement. I previously extended that deadline to November 15, 2020. I then extended the date again to December 15, 2020 and again extended the date to February 15, 2021. I then extended the date again to March 19, 2021. Please take this email as notice under that I further extend the deadline to April 19, 2021.

Thank you,

From: Marco Mancuso <mancuso0@hotmail.com>
Sent: February 12, 2021 9:29 AM
To: Dcasey@cresford.com <Dcasey@cresford.com>; Dmann@cresford.com <Dmann@cresford.com>
Subject: Settlement agreement extension #4 - Marco Mancuso

Dan,

With respect to my settlement agreement:

Cresford is in breach of paragraph 1(a) because it has said it cannot or will not direct funds to me from the closing of 69 Hayden Street. I don't waive that breach but it will be moot assuming I am paid from the closing of the YSL project so I will forbear for the moment on taking any steps to address the breach in the expectation that will occur. Please provide any updated irrevocable directions necessary given that the project is no longer being sold to Empire as it was when the original directions were signed.

The first payment of \$180,000 under paragraph 1(a) of my agreement was due by October 15, 2020 pursuant to paragraph 4 of the agreement. I previously extended that deadline to November 15, 2020. I then extended the date again to December 15, 2020 and again extended the date to February 15, 2021. Please take this email as notice under that I further extend the deadline to March 19, 2021.

Thank you,

Marco Mancuso PMP, GSC, LEED AP
Director, Construction
Cresbuild
59 Hayden Street, Suite 200 | Toronto, ON | M4Y 0E7
T: [416.971.7557](tel:416.971.7557) ext. 281 | C: [416.452.0387](tel:416.452.0387) | E: marco@cresbuild.com www.cresford.com/cresbuild

-----Original Message-----

From: Marco Mancuso
Sent: November 13, 2020 12:01 PM
To: Dan Casey <dcasey@cresford.com>
Cc: Dave Mann <dmann@cresford.com>
Subject: Settlement agreement extension #2 - Marco Mancuso

Dan,

With respect to my settlement agreement:

Cresford is in breach of paragraph 1(a) because it has said it cannot or will not direct funds to me from the closing of 69 Hayden Street. I don't waive that breach but it will be moot assuming I am paid from the closing of the YSL project so I will forbear for the moment on taking any steps to address the breach in the expectation that will occur. Please provide any updated irrevocable directions necessary given that the project is no longer being sold to Empire as it was when the original directions were signed.

The first payment of \$180,000 under paragraph 1(a) of my agreement was due by October 15, 2020 pursuant to paragraph 4 of the agreement. I previously extended that deadline to November 15, 2020. Please take this email as notice under that I further extend the deadline to December 15, 2020.

Thank you,

Marco Mancuso PMP, GSC, LEED AP
Director, Construction
Cresbuild
59 Hayden Street, Suite 200 | Toronto, ON | M4Y 0E7
T: [416.971.7557](tel:416.971.7557) ext. 281 | C: [416.452.0387](tel:416.452.0387) | E: marco@cresbuild.com www.cresford.com/cresbuild

-----Original Message-----

From: Marco Mancuso
Sent: October 14, 2020 9:45 AM
To: Dan Casey <dcasey@cresford.com>; Dave Mann <dmann@cresford.com>; 'Joe Bolla' <joebolla@gmail.com>
Cc: Marco Mancuso <mancus0@hotmail.com>; Louie Giannakopoulos <lgiannakopoulos@cresbuild.com>
Subject: Settlement agreement extension - Marco Mancuso

Dan,

As per paragraph number #4 of my signed settlement agreement; specifically in regards to paragraph 1(a). This email serves as my written notice that if payment is not received by the indicated date then the payment date shall be extended to November 15, 2020.

Thanks,

Marco Mancuso PMP, GSC, LEED AP
Director, Construction
Cresbuild
59 Hayden Street, Suite 200 | Toronto, ON | M4Y 0E7
T: [416.971.7557](tel:416.971.7557) ext. 281 | C: [416.452.0387](tel:416.452.0387) | E: marco@cresbuild.com www.cresford.com/cresbuild

-----Original Message-----

From: Dave Mann <dmann@cresford.com>
Sent: September 8, 2020 2:21 PM
To: Marco Mancuso <marco@cresbuild.com>
Subject: FW: Marco

Hi Marco,

Attached are the documents signed by Dan. I have sent the directions to the lawyers for acknowledgement.

Dave

-----Original Message-----

From: Dave Mann [<mailto:dmann57@hotmail.com>]
Sent: September 8, 2020 2:11 PM
To: Dave Mann <dmann@cresford.com>
Subject: Marco

This communication is intended only for the party to whom it is addressed, and may contain information which is privileged or confidential. Any other delivery, distribution, copying or disclosure is strictly prohibited and is not a waiver of privilege or confidentiality. If you have received this telecommunication in error, please notify the sender immediately by return electronic mail and destroy the message.

TAB B

SCHEDULE “B” – PRIORITY OF CLAIM

As a joint employer, YSL failed to pay Mancuso wages, salaries, commissions or compensation for services rendered during the period beginning on the day that is six months before the date of the initial bankruptcy event. This amount exceeded \$2,000.00. Mancuso accordingly has a priority claim for \$2,000.00 pursuant to sections 81.3 and 136(1)(d) of the BIA.

EXHIBIT "A" – AMENDED PARTICULARS OF CLAIMS

1. THE CLAIMS (together, the **Claims**) as against YG Limited Partnership and YSL Residences Inc. (together, **YSL**) are:

- (a) damages for constructive dismissal: \$38,307 ~~\$153,228.00~~, being contractual pay in lieu of 6 ~~24~~ months' notice, inclusive of HST;
- (b) earned Bonus Commission (as defined below) on the YSL project, inclusive of HST: \$282,500.00;
- (c) earned Bonus Commission on the 33 Yorkville project, inclusive of HST: \$282,500;
- (d) earned Cooperating Commissions (as defined below), inclusive of HST: \$58,470; and
- (e) earned Broker Pool Commissions (as defined below), inclusive of HST: \$105,622.

2. The total value of the Claims is: \$767,399 ~~\$882,320~~.

I. OVERVIEW

3. Sarven (Steve) Cicekian (**Cicekian**) was employed in common by a number of Cresford companies, including YSL, until his constructive dismissal in late 2019.

4. Cicekian earned significant bonus commissions for assisting with the launch of the 33 Yorkville, Halo and YSL projects, amounts that were acknowledged in Cicekian's written employment agreement. As well, Cicekian earned cooperating commissions and broker pool commissions from marketing Cresford projects.

5. In December 2019, Cicekian requested payment of the bonuses and commissions that he had earned to date and that were then overdue for payment. Cresford failed to pay the commissions, and refused to provide a date by which it would do so. By so doing, Cresford constructively dismissed him. Cicekian is accordingly owed damages in lieu of notice as a result of his dismissal.

6. YSL has acknowledged that it owes Cicekian at least a portion of these amounts. Cresford requested that Cicekian issue invoices to YSL for \$282,500 in bonus commissions, inclusive of HST, that were owing. YSL's chart of accounts payable acknowledged that it owed Cicekian \$565,000, equal to all of the bonus commissions then owed to Cicekian.

II. CICEKIAN'S EMPLOYMENT BY CRESFORD

7. YSL is part of a commonly owned group of companies and partnerships (together, **Cresford**) engaged in the development, construction, marketing and sale of condominiums in Toronto, Ontario under the business name Cresford. Cresford conducts its real estate development business through a series of project companies that hold title to and carry out individual development projects.

8. In March 2013, Cresford hired Cicekian as a sales representative. Cicekian's primary responsibility was to market and sell units in the Cresford projects. Cicekian was remunerated

through fixed monthly payments, commissions and bonuses. Cicekian was initially not asked to and did not sign any written agreements governing his engagement.

9. In 2015, Cresford promoted Cicekian to Director of Sales, with expanded responsibilities including the supervision of three sales staff and four administrative staff. Cicekian assisted in opening Cresford's real estate brokerage, Cresford Real Estate Corporation, and then acted as its broker of record.

10. In addition to YSL, Cicekian performed work for the following Cresford companies (the **Cresford Employers**): Cresford Real Estate Corporation, Cresford (Rosedale) Developments Inc., East Downtown Redevelopment Partnership, 33 Yorkville Residences Inc., 33 Yorkville Residences Limited Partnership, 480 Yonge Street Inc., 480 Yonge Street Limited Partnership, The Clover On Yonge Inc., The Clover On Yonge Limited Partnership, and 9615334 Canada Inc.

11. Because Cicekian worked for all of these Cresford companies, he was employed in common by all of them, including YSL, within the meaning set out in *Downtown Eatery (1993) Ltd. v. Ontario*, [2001 CanLII 8538](#) (Ont. C.A.) and *Nortel Networks Corporation (Re)*, [2016 ONSC 6030](#) because:

- (a) The Cresford Employers were under the common control of the same managers, who acted on behalf of each of the Cresford Employers;
- (b) YSL and each of the relevant project companies directed and exercised effective control over Cicekian's activities relating to the associated real estate project;

- (c) Cicekian's bonus entitlements were specifically linked to his work on YSL and the other project companies; and
- (d) YSL specifically acknowledged that it was liable for paying amounts to Cicekian on behalf of other Cresford companies, as described in section VII below.

12. The Cresford Employers, including YSL, are accordingly jointly liable for all of the obligations owed to Cicekian.

13. On March 5, 2020, Cicekian, together with Mike Catsiliras, commenced an action against Cresford companies and certain directors and officers for breach of contract and oppression, later amended on September 22, 2020 (attached as **Attachment 1**). Cicekian adopts each of the allegations in the action for the purposes of these claims. This action was stayed against Clover, Halo and now YSL by the commencement of insolvency proceedings. As of the date of this claim, no statement of defence has been delivered in the action. The defendants have been noted in default but the parties are discussing terms of a potential consent order to set aside the default.

III. EARNED BONUS COMMISSIONS

14. Cresford's officers orally agreed to a bonus structure involving bonuses for sales of units in Cresford projects, which were paid by a project-specific Cresford corporation. Cresford and Cicekian agreed to the following project-by-project commissions (together, the **Bonus Commissions**):

Project	Earned Bonus Commission	Future Bonus Commission
33 Yorkville	\$250,000	\$250,000
YSL	\$250,000	\$250,000
	\$500,000	\$500,000

15. Cresford and Cicekian agreed that for each project, 50% of the Bonus Commission would be payable within a reasonable period following the project's launch, and the remaining 50% upon registration of the project's condominium corporation.

16. Cicekian earned the first 50% of each Bonus Commission and claims these amounts. He does not claim the future Bonus Commissions payable upon the registration of the projects, as that milestone has not yet occurred.

17. In early December 2019, Cicekian executed a Contracting Services Agreement (attached as **Attachment 2**), with amending schedules that confirmed certain bonus commissions previously agreed to. The parties dated the schedules to reflect the approximate date on which the Bonus Commissions had been awarded, although the agreements were executed in December 2019.

18. YSL is liable for each of these earned Bonus Commissions as an employer in common of Cicekian.

IV. COOPERATING COMMISSIONS

19. In addition to selling new units in the Cresford projects, Cicekian also acted as a cooperating agent on behalf of some buyers of the units. Like other cooperating agents, Cicekian earned commissions on those sales, which were set out in the relevant agreements of purchase and sale and recorded in the trade sheets maintained by Cresford Real Estate, Cresford's wholly owned

brokerage company. These commissions were payable 50% when the agreement of purchase and sale became firm and 50% when the sale of the unit successfully closed. Cresford Real Estate invoiced the relevant Cresford project company seller for the cooperating commission, which was payable to the agent.

20. Cicekian earned the following cooperating commissions on purchases of units in Cresford projects (the **Cooperating Commissions**):

Project	Earned Cooperating Commission	Future Cooperating Commission
33 Yorkville	\$51,744	\$51,744

21. As of January 2020, the first 50% of these cooperating commissions were earned by Cicekian, for which YSL is jointly liable as an employer in common.

V. BROKER POOL COMMISSIONS

22. Cresford’s agents also facilitated the resale and lease of Cresford project units. For such transactions, Cresford Real Estate would credit the resulting commission to a “pool” of commissions. Half of the pooled commissions was payable to Cresford, and the remaining half was divided equally between Cresford’s agents.

23. As of January 2020, Cresford Real Estate owed Cicekian \$93,471 for these shared broker pool commissions (the **Broker Pool Commissions**), for which YSL is jointly liable as an employer in common.

VI. CONSTRUCTIVE DISMISSAL

24. In December 2019, Cicekian requested payment of the bonuses and commissions that he had earned to date. By the end of the year, Cresford had still failed to pay the commissions, and refused to provide a date by which it would do so. By so doing, Cresford constructively dismissed him.

25. On January 2, 2020, Cicekian advised that as a result of non-payment and the deteriorating situation at Cresford, they would “resign” their positions effective in two weeks. As a matter of law, however, Cicekian was constructively dismissed and did not resign.

26. Cresford has failed to pay Cicekian pay in lieu of notice of termination, who is entitled to 6 ~~24~~ months’ salary in lieu of notice. Cicekian’s monthly compensation was \$5,000, plus HST. YSL is jointly liable as an employer in common for 6 ~~24~~ months’ pay in lieu of notice of termination, being \$38,307 ~~\$153,228~~ inclusive of HST.

VII. YSL’S ACKNOWLEDGMENT OF ITS LIABILITY FOR THE EARNED BONUS COMMISSIONS OWING

27. Cresford acknowledged that YSL was required to pay the bonuses that were owing to Mike Cicekian. In December 2019, Cresford requested that Cicekian issue invoices to YSL and 33 Yorkville for the \$250,000 in earned Bonus Commissions owing in relation to each of those projects.

28. Cicekian accordingly issued the following invoices under the name of his professional services company, Rosa Trading Ltd.:

- (a) an invoice on December 19, 2019 to YSL totaling \$282,500, inclusive of HST (attached as **Attachment 3**); and
- (b) an invoice on December 13, 2019 to 33 Yorkville totaling \$282,500, inclusive of HST (attached as **Attachment 4**).

29. On March 31, 2020, Cresford created a list of accounts payable owed by YSL dated as of March 31, 2020 (attached as **Attachment 5**). On that list, YSL acknowledged that it owed Cicekian, through Rosa Trading Ltd., an amount of \$565,000, equal to the two invoices issued in December.

Bankruptcy and Insolvency Act ("Act")

Proof of Claim

(Section 50.1, 81.5, 81.6, Subsections 65.2(4), 81.2(1), 81.3(8), 81.4(8), 102(2), 124(2), 128(1), and Paragraphs 51(1)(e) and 66.14(b) of the Act)

All notices or correspondence regarding this claim must be forwarded to the following address:

Creditor Name:	<u>Sarven Cicekian</u>	Telephone:	<u>(416) 768-9994</u>
Address:	<u>c/o James Gibson, Naymark Law</u>	Fax:	<u>(647) 660-5060</u>
	<u>171 John Street, Suite 101,</u>	Email:	<u>jgibson@naymarklaw.com</u>
	<u>Toronto, ON, M5T 1X3</u>		
Account No.:	<u>Nil</u>		

In the matter of the bankruptcy (or the proposal, or the receivership) of YSL Residences Inc. and YG Limited Partnership (*name of debtor*) of the City of Toronto, Ontario (*city and province*) and the claim of Sarven Cicekian, creditor.

I, Sarven Cicekian (*name of creditor or representative of the creditor*), of City of Toronto, Ontario (*city and province*), do hereby certify:

1. That I am a creditor of the above-named debtor (~~or that I am _____ (*state position or title*) of _____ (*name of creditor*)~~).
2. That I have knowledge of all the circumstances connected with the claim referred to below.
3. That the debtor was, at the date of bankruptcy, (or the date of the receivership, or in the case of a proposal, the date of the notice of intention or of the proposal, if no notice of intention was filed), namely the 30th day of April, 2021, and still is, indebted to the creditor in the sum of **\$882,320.00**, as specified in the statement of account (or affidavit) attached and marked **Schedule "A"**, after deducting any counterclaims to which the debtor is entitled. (The attached statement of account or affidavit must specify the vouchers or other evidence in support of the claim.)
4. (Check and complete appropriate category.)

A. UNSECURED CLAIM (AFFECTED CLAIM) OF \$882,320.00 (other than as a customer contemplated by Section 262 of the Act)
That in respect of this debt, I do not hold any assets of the debtor as security and
(Check appropriate description.)

Regarding the amount of \$880,320.00, I do not claim a right to a priority.

Regarding the amount of \$2,000.00, I claim a right to a priority under Section 136 of the Act.
(Set out on an attached sheet details to support priority claim.)
See **Schedule "B"**.

B. SECURED CLAIM OF \$0.00
That in respect of this debt, I hold assets of the debtor valued at \$ _____ as security, particulars of which are as follows:
(Give full particulars of the security, including the date on which the security was given and the value at which you assess the security, and attach a copy of the security documents.)

C. CONSTRUCTION LIEN CLAIM OF \$0.00
That in respect of this debt I have registered a lien on title to the Debtors' real property in accordance with the *Construction Act* (Ontario), particulars of which are as follows:

(Give full particulars of the lien, including the date on which the lien was registered and the value secured by such lien, and attach a copy of any relevant documents, including any statement of claim).

1. That, to the best of my knowledge, I am (or the above-named creditor is) (or am not or is not) related to the debtor within the meaning of Section 4 of the Act, and have (or has) (or have not or has not) dealt with the debtor in a non- arm's-length manner.
2. That the following are the payments that I have received from, the credits that I have allowed to, and the transfers at undervalue within the meaning of Subsection 2(1) of the Act that I have been privy to or a party to with the debtor within the three months (or, if the creditor and the debtor are related within the meaning of Section 4 of the Act or were not dealing with each other at arm's length, within the 12 months) immediately before the date of the initial bankruptcy event within the meaning of Subsection 2(1) of the Act: (Provide details of payments, credits and transfers at undervalue.)

Dated at City of Toronto, Ontario, this 11th day of June, 2021.



Witness



Creditor Authorized Signatory
Sarven Cicekian

NOTE: If an affidavit is attached, it must have been made before a person qualified to take affidavits.

WARNINGS: A trustee may, pursuant to Subsection 128(3) of the Act, redeem a security on payment to the secured creditor of the debt or the value of the security as assessed, in a proof of security, by the secured creditor.

Subsection 201(1) of the Act provides severe penalties for making any false claim, proof, declaration or statement of account.

DIRECTIONS FOR COMPLETION OF THIS FORM ARE ON THE REVERSE SIDE

CONDITIONAL CLAIM ADDENDUM

By checking the box below, you are electing for your Claim to be treated as a Conditional Claim (as defined in the Proposal). By electing for your claim to be treated as a Conditional Claim, you are recognizing that:

- a) One or more contractual conditions in your arrangements with the Company were not satisfied as at April 30, 2021 (referred to in the Proposal as "Conditional Claim Conditions");
- b) You are undertaking to complete all Conditional Claim Conditions and provide proof of such completion by no later than the Conditional Claim Completion Deadline; and
- c) You understand that the failure to complete all Conditional Claim Conditions by the Conditional Claim Completion Deadline will result in your Claim being fully, finally and irrevocably disallowed.

I hereby elect for my Claim to be treated as a Conditional Claim:

Creditor Authorized Signatory

TAB A

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
COMMERCIAL LIST

IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY
ACT, R.S.C. 1985, C. B-3, AS AMENDED

IN THE MATTER OF THE NOTICES OF INTENTION TO
MAKE A PROPOSAL OF YG LIMITED PARTNERSHIP
AND YSL RESIDENCES INC.

Applicants

AFFIDAVIT OF SARVEN CICEKIAN
(Sworn on June 11, 2021)

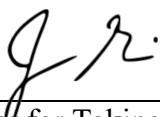
I, Sarven Cicekian, of the City of Toronto, Ontario, MAKE OATH AND SAY:

1. I am a creditor in this proceeding, and as such have knowledge of the matters contained in this affidavit. Where my knowledge is based on information from other sources, I state the source of that information and believe the information to be true.
2. I confirm that the information contained in the particulars of claim attached as **Exhibit "A"**, together with the supporting attachments, is accurate and I adopt it for the purposes of this affidavit.

3. I make this affidavit in support of a proof of claim in this proceeding, and for no other or improper purpose.

SWORN by videoconference technology by the deponent, located in the City of Toronto, Ontario, before the commissioner, located in the City of Toronto, Ontario in accordance with O. Reg. 431/20, Adminstrating Oath Remotely on June 11, 2021

}



Commissioner for Taking Affidavits
JAMES GIBSON



SARVEN CICEKIAN

THIS IS EXHIBIT "A" REFERRED TO
IN THE AFFIDAVIT OF SARVEN CICEKIAN
SWORN BEFORE ME, THIS 11TH DAY OF JUNE, 2021



JAMES GIBSON

A Commissioner Etc.

EXHIBIT "A" – PARTICULARS OF CLAIMS
--

1. THE CLAIMS (together, the **Claims**) as against YG Limited Partnership and YSL Residences Inc. (together, **YSL**) are:

- (a) damages for constructive dismissal: \$153,228.00, being contractual pay in lieu of 24 months' notice, inclusive of HST;
- (b) earned Bonus Commission (as defined below) on the YSL project, inclusive of HST: \$282,500.00;
- (c) earned Bonus Commission on the 33 Yorkville project, inclusive of HST: \$282,500;
- (d) earned Cooperating Commissions (as defined below), inclusive of HST: \$58,470; and
- (e) earned Broker Pool Commissions (as defined below), inclusive of HST: \$105,622.

2. The total value of the Claims is: \$882,320.

I. OVERVIEW

3. Sarven (Steve) Cicekian (**Cicekian**) was employed in common by a number of Cresford companies, including YSL, until his constructive dismissal in late 2019.

4. Cicekian earned significant bonus commissions for assisting with the launch of the 33 Yorkville, Halo and YSL projects, amounts that were acknowledged in Cicekian's written employment agreement. As well, Cicekian earned cooperating commissions and broker pool commissions from marketing Cresford projects.

5. In December 2019, Cicekian requested payment of the bonuses and commissions that he had earned to date and that were then overdue for payment. Cresford failed to pay the commissions, and refused to provide a date by which it would do so. By so doing, Cresford constructively dismissed him. Cicekian is accordingly owed damages in lieu of notice as a result of his dismissal.

6. YSL has acknowledged that it owes Cicekian at least a portion of these amounts. Cresford requested that Cicekian issue invoices to YSL for \$282,500 in bonus commissions, inclusive of HST, that were owing. YSL's chart of accounts payable acknowledged that it owed Cicekian \$565,000, equal to all of the bonus commissions then owed to Cicekian.

II. CICEKIAN'S EMPLOYMENT BY CRESFORD

7. YSL is part of a commonly owned group of companies and partnerships (together, **Cresford**) engaged in the development, construction, marketing and sale of condominiums in Toronto, Ontario under the business name Cresford. Cresford conducts its real estate development business through a series of project companies that hold title to and carry out individual development projects.

8. In March 2013, Cresford hired Cicekian as a sales representative. Cicekian's primary responsibility was to market and sell units in the Cresford projects. Cicekian was remunerated

through fixed monthly payments, commissions and bonuses. Cicekian was initially not asked to and did not sign any written agreements governing his engagement.

9. In 2015, Cresford promoted Cicekian to Director of Sales, with expanded responsibilities including the supervision of three sales staff and four administrative staff. Cicekian assisted in opening Cresford's real estate brokerage, Cresford Real Estate Corporation, and then acted as its broker of record.

10. In addition to YSL, Cicekian performed work for the following Cresford companies (the **Cresford Employers**): Cresford Real Estate Corporation, Cresford (Rosedale) Developments Inc., East Downtown Redevelopment Partnership, 33 Yorkville Residences Inc., 33 Yorkville Residences Limited Partnership, 480 Yonge Street Inc., 480 Yonge Street Limited Partnership, The Clover On Yonge Inc., The Clover On Yonge Limited Partnership, and 9615334 Canada Inc.

11. Because Cicekian worked for all of these Cresford companies, he was employed in common by all of them, including YSL, within the meaning set out in *Downtown Eatery (1993) Ltd. v. Ontario*, [2001 CanLII 8538](#) (Ont. C.A.) and *Nortel Networks Corporation (Re)*, [2016 ONSC 6030](#) because:

- (a) The Cresford Employers were under the common control of the same managers, who acted on behalf of each of the Cresford Employers;
- (b) YSL and each of the relevant project companies directed and exercised effective control over Cicekian's activities relating to the associated real estate project;

- (c) Cicekian's bonus entitlements were specifically linked to his work on YSL and the other project companies; and
- (d) YSL specifically acknowledged that it was liable for paying amounts to Cicekian on behalf of other Cresford companies, as described in section VII below.

12. The Cresford Employers, including YSL, are accordingly jointly liable for all of the obligations owed to Cicekian.

13. On March 5, 2020, Cicekian, together with Mike Catsiliras, commenced an action against Cresford companies and certain directors and officers for breach of contract and oppression, later amended on September 22, 2020 (attached as **Attachment 1**). Cicekian adopts each of the allegations in the action for the purposes of these claims. This action was stayed against Clover, Halo and now YSL by the commencement of insolvency proceedings. As of the date of this claim, no statement of defence has been delivered in the action. The defendants have been noted in default but the parties are discussing terms of a potential consent order to set aside the default.

III. EARNED BONUS COMMISSIONS

14. Cresford's officers orally agreed to a bonus structure involving bonuses for sales of units in Cresford projects, which were paid by a project-specific Cresford corporation. Cresford and Cicekian agreed to the following project-by-project commissions (together, the **Bonus Commissions**):

Project	Earned Bonus Commission	Future Bonus Commission
33 Yorkville	\$250,000	\$250,000
YSL	\$250,000	\$250,000
	\$500,000	\$500,000

15. Cresford and Cicekian agreed that for each project, 50% of the Bonus Commission would be payable within a reasonable period following the project's launch, and the remaining 50% upon registration of the project's condominium corporation.

16. Cicekian earned the first 50% of each Bonus Commission and claims these amounts. He does not claim the future Bonus Commissions payable upon the registration of the projects, as that milestone has not yet occurred.

17. In early December 2019, Cicekian executed a Contracting Services Agreement (attached as **Attachment 2**), with amending schedules that confirmed certain bonus commissions previously agreed to. The parties dated the schedules to reflect the approximate date on which the Bonus Commissions had been awarded, although the agreements were executed in December 2019.

18. YSL is liable for each of these earned Bonus Commissions as an employer in common of Cicekian.

IV. COOPERATING COMMISSIONS

19. In addition to selling new units in the Cresford projects, Cicekian also acted as a cooperating agent on behalf of some buyers of the units. Like other cooperating agents, Cicekian earned commissions on those sales, which were set out in the relevant agreements of purchase and sale and recorded in the trade sheets maintained by Cresford Real Estate, Cresford's wholly owned

brokerage company. These commissions were payable 50% when the agreement of purchase and sale became firm and 50% when the sale of the unit successfully closed. Cresford Real Estate invoiced the relevant Cresford project company seller for the cooperating commission, which was payable to the agent.

20. Cicekian earned the following cooperating commissions on purchases of units in Cresford projects (the **Cooperating Commissions**):

Project	Earned Cooperating Commission	Future Cooperating Commission
33 Yorkville	\$51,744	\$51,744

21. As of January 2020, the first 50% of these cooperating commissions were earned by Cicekian, for which YSL is jointly liable as an employer in common.

V. BROKER POOL COMMISSIONS

22. Cresford's agents also facilitated the resale and lease of Cresford project units. For such transactions, Cresford Real Estate would credit the resulting commission to a "pool" of commissions. Half of the pooled commissions was payable to Cresford, and the remaining half was divided equally between Cresford's agents.

23. As of January 2020, Cresford Real Estate owed Cicekian \$93,471 for these shared broker pool commissions (the **Broker Pool Commissions**), for which YSL is jointly liable as an employer in common.

VI. CONSTRUCTIVE DISMISSAL

24. In December 2019, Cicekian requested payment of the bonuses and commissions that he had earned to date. By the end of the year, Cresford had still failed to pay the commissions, and refused to provide a date by which it would do so. By so doing, Cresford constructively dismissed him.

25. On January 2, 2020, Cicekian advised that as a result of non-payment and the deteriorating situation at Cresford, they would “resign” their positions effective in two weeks. As a matter of law, however, Cicekian was constructively dismissed and did not resign.

26. Cresford has failed to pay Cicekian pay in lieu of notice of termination, who is entitled to 24 months’ salary in lieu of notice. Cicekian’s monthly compensation was \$5,000, plus HST. YSL is jointly liable as an employer in common for 24 months’ pay in lieu of notice of termination, being \$153,228 inclusive of HST.

VII. YSL’S ACKNOWLEDGMENT OF ITS LIABILITY FOR THE EARNED BONUS COMMISSIONS OWING

27. Cresford acknowledged that YSL was required to pay the bonuses that were owing to Mike Cicekian. In December 2019, Cresford requested that Cicekian issue invoices to YSL and 33 Yorkville for the \$250,000 in earned Bonus Commissions owing in relation to each of those projects.

28. Cicekian accordingly issued the following invoices under the name of his professional services company, Rosa Trading Ltd.:

- (a) an invoice on December 19, 2019 to YSL totaling \$282,500, inclusive of HST (attached as **Attachment 3**); and
- (b) an invoice on December 13, 2019 to 33 Yorkville totaling \$282,500, inclusive of HST (attached as **Attachment 4**).

29. On March 31, 2020, Cresford created a list of accounts payable owed by YSL dated as of March 31, 2020 (attached as **Attachment 5**). On that list, YSL acknowledged that it owed Cicekian, through Rosa Trading Ltd., an amount of \$565,000, equal to the two invoices issued in December.

Attachment 1

AMENDED THIS
MODIFIÉ CE

September 22nd, 2020

PURSUANT TO
CONFORMÉMENT À

RULE/LA RÈGLE 26 02 (A)

THE ORDER OF
L'ORDONNANCE DU

DATED / FAIT LE

REGISTRAR
SUPERIOR COURT OF JUSTICE

Richard J.
GREFFIER
COUR SUPÉRIEURE DE JUSTICE

ONTARIO
SUPERIOR COURT OF JUSTICE

Court File No. CV-20-00637543-0000

BETWEEN:

SARVEN CICEKIAN and MIKE CATSILIRAS

Plaintiffs

- and -

CRESFORD REAL ESTATE CORPORATION, CRESFORD (ROSEDALE)
DEVELOPMENTS INC., EAST DOWNTOWN REDEVELOPMENT
PARTNERSHIP, 33 YORKVILLE RESIDENCES INC., 33 YORKVILLE
RESIDENCES LIMITED PARTNERSHIP, 480 YONGE STREET INC., 480
YONGE STREET LIMITED PARTNERSHIP, THE CLOVER ON YONGE INC.,
THE CLOVER ON YONGE LIMITED PARTNERSHIP, YSL RESIDENCES INC.,
YG LIMITED PARTNERSHIP, 9615334 CANADA INC., DANIEL C. CASEY and
DAVID MANN

Defendants

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff.
The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$5,000 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for costs and have the costs assessed by the court.

Date: March 5, 2020

Issued by: "@V-E Filing"
Local Registrar
Ontario Superior Court of Justice
330 University Avenue, Toronto ON

TO: NELLIGAN O'BRIEN PAYNE LLP
50 O'Connor Street, Suite 300
Ottawa, ON K1P 6L2

Allan R. O'Brien (LSO No. 15326T)
allan.obrien@nelliganlaw.ca
Tel 613.231.8224
Fax 613.788.3654

Counsel for the Defendants

CLAIM

1. The plaintiffs, Sarven Cicekian and Mike Catsiliras, claim as against the defendants:
 - (a) damages for breach of contract and oppression in the amount of \$1,600,000 \$1,400,000 plus harmonized sales tax, including in relation to the outstanding Bonus Commissions, Cooperating Commissions, Broker Pool Commissions and Other Commissions (as defined below) and constructive dismissal;
 - (b) damages for breach of contract and oppression in the further amounts set out below, plus harmonized sales tax:
 - (i) \$900,000, which was payable upon the completion of the projects that are the subject of the Bonus Commissions (as defined below) prior to the defendants' breach;
 - (ii) \$199,818, which was payable upon the final closing of the units that are the subject of the Cooperating Commissions (as defined below) prior to the defendants' breach;
 - (c) a declaration pursuant to section 248 of the *Business Corporations Act*, RSO 1990, c B.16 (*OBCA*) that the business of the corporate defendants and their affiliates was conducted, and the powers of their directors were exercised, in a manner that was oppressive, unfairly prejudicial and unfairly disregarded the interests of the plaintiffs;

- (d) an order pursuant to section 248 of the *OBCA* that this Honourable Court finds appropriate, including compensating the plaintiffs for the defendants' oppressive conduct;
- (e) a declaration that Casey is liable to each of the plaintiffs for an amount equal to six months' wages under section 131 of the *Business Corporations Act*, RSO 1990, c B.16;
- (f) pre- and post-judgment interest in accordance with the *Courts of Justice Act*, RSO 1990, c C.43, as amended (*CJA*);
- (g) costs of this action on a full indemnity basis; and
- (h) such further and other relief as the nature of this case may require and this Honourable Court deems just.

A. Parties

2. The plaintiffs Sarven Cicekian (**Cicekian**) and Mike Catsiliras (**Catsiliras**) are registered real estate salespersons and residents of Toronto. As described below, the plaintiffs were engaged to sell units in a number of condominium projects.

3. The corporate defendants (together, **Cresford**) are each Ontario corporations and partnerships. They are each part of a group of companies and partnerships engaged in the development, construction, marketing and sale of condominiums in Toronto, Ontario under the business name Cresford, including the following condominium projects:

- (a) The Clover on Yonge (**Clover**), a 44-storey condominium located near Yonge and Bloor owned by Clover on Yonge Inc. in its capacity as general partner of Clover on Yonge Limited Partnership;
- (b) Halo Residences on Yonge (**Halo**), a 38-storey condominium tower located on Yonge Street between Wellesley and Carlton in Toronto owned by 480 Yonge Street Inc., the general partner of 480 Yonge Street Limited Partnership;
- (c) The Residences of 33 Yorkville (**33 Yorkville**), a condominium with one 64- storey tower and one 41-storey tower owned by 33 Yorkville Residences Inc., in its capacity as general partner of 33 Yorkville Residences Limited Partnership; and
- (d) Yonge Street Living Residences (**YSL**), an 85-storey condominium tower located at the corner of Yonge and Gerrard in Toronto, which is owned by YSL Residences Inc. and 9615334 Canada Inc. in its capacity as the general partner of YG Limited Partnership.

4. The defendant Cresford Real Estate Corporation (**Cresford Real Estate**) is a corporation in the Cresford Group and a registered real estate brokerage.

5. The defendant Cresford (Rosedale) Developments Inc. is a company in the Cresford Group that was involved in producing a written agreement related to the Bonus Commissions, as described below.

6. The defendant East Downtown Redevelopment Partnership acts as a management company for the Cresford Group.

7. The defendant, Daniel Casey (**Casey**), is an individual resident in Ontario. At all material times, Casey was the principal of Cresford and is the beneficial owner of and controls the corporate defendants.

8. The defendant, David Mann (**Mann**), is an individual resident in Ontario. At all material times, Mann was the Chief Financial Officer of Cresford.

9. The following defendants are now subject to stays of proceedings imposed as a result of insolvency proceedings:

(a) 33 Yorkville Residences Inc. and 33 Yorkville Residences Limited Partnership are subject to a court-appointed receivership (CV-20-00637297-00CL) under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (**BIA**);

(b) 480 Yonge Street Inc. and 480 Yonge Street Limited Partnership are subject to a court-appointed receivership (CV-20-00637301-00CL) under the BIA; and

(c) The Clover On Yonge Inc. and The Clover On Yonge Limited Partnership were subject to a court-appointed receivership (CV-20-00637301-00CL) under the BIA, which was converted into a proceeding under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (CV-20-00642928-00CL).

B. Plaintiffs' Employment by Cresford

10. In March 2013, Cresford hired Cicekian as a sales representative. In that role, Cicekian was responsible for selling new condominium units in Cresford developments, and for reselling and leasing previously sold units.

11. In 2015, Cresford promoted Cicekian to Director of Sales, with expanded responsibilities including the supervision of three sales staff and four administrative staff. At around the same time, Cresford hired Catsiliras as a sales representative.

12. Prior to 2017, Cicekian and Catsiliras each maintained their realtor registration with an independent brokerage, through which each performed their sales and leasing activities for Cresford. In 2017, Cresford opened its own brokerage, Cresford Real Estate, through which Cicekian and Catsiliras then undertook these activities. Cicekian became broker of record for Cresford Real Estate.

13. At around this time, Cresford further promoted Cicekian to the position of Vice President of Sales, with expanded responsibilities that included exercising signing authority on behalf of Cresford for sales matters. Catsiliras was promoted to the position of Director of Sales.

14. At the material times, Cicekian reported directly to Maria Athanasoulis (**Athanasoulis**), the President and Chief Operating Officer of Cresford. Catsiliras reported to Cicekian.

15. The plaintiffs' primary responsibility was to market and sell units in the Cresford projects, including at the "launch" or initial offering of the condominium units made over a period of two or three days. Cresford's typical goal was to sell up to 75 percent of the new units in a project during the launch. The launch and the preceding month were accordingly periods of intense activity for Cresford's salespeople. As described below, the plaintiffs also acted as agents for the lease and resale of Cresford project units.

C. Commissions for Sales of New Project Units

16. The plaintiffs were remunerated through fixed monthly payments, commissions and bonuses, which are described below. This remuneration was set in agreement with Casey and Athanasoulis, acting on behalf of Cresford. Aside from the written bonus agreements described below, the plaintiffs were not asked to and did not sign any written agreements governing their engagement, other than one written agreement signed by Cicekian in 2013 relating to a discrete Cresford project not in issue.

17. Prior to the launch of each Cresford development project, Athanasoulis, on behalf of Cresford, orally agreed to a commission structure with each of Cicekian and Catsiliras. For these new unit sales, a project-specific Cresford corporation paid the plaintiffs, not Cresford Real Estate. These Cresford projects were employers or contractors of the plaintiffs in common with the brokerage and exercised common control over their activities.

18. Cresford generally offered discounted prices and lower deposit amounts for project units to the plaintiffs, as an incentive to purchase units. In some cases, the plaintiffs agreed with Cresford that their commissions would be credited towards the deposit and purchase price of a unit that they were purchasing in the project, rather than being paid to the plaintiffs in cash.

19. For earlier projects, Cresford agreed to pay a flat commission per unit sold, payable 50% when the agreement of purchase and sale became firm and 50% when the sale of the unit successfully closed. For example, Cicekian was awarded bonus commissions on prior projects in the following approximate amounts: Casa 3 (\$124,000), VOX (\$119,000) and Clover (\$256,000). Catsiliras received approximately \$125,000 in bonus commissions on the Clover project.

20. In or around the summer of 2016, the plaintiffs' commission structure changed. Given a shorter selling period and the success of the prior launches, Athanasoulis and the plaintiffs agreed to move to a lump sum, per-project bonus commission payable for each project. The amounts of these commissions were discussed and agreed upon prior to each project's launch. Approximately \$150,000 in bonus commissions on the Halo project were awarded to Cicekian in this fashion.

21. In accordance with this arrangement, Cresford and the plaintiffs agreed to the following project-by-project commissions (together, the **Bonus Commissions**):

Agent	Project	Bonus Commission
Mike Catsiliras	Halo	\$200,000
	33 Yorkville	\$300,000
	YSL	\$300,000
Total		<hr/> \$800,000
Sarven Cicekian	33 Yorkville	\$500,000
	YSL	\$500,000
Total		<hr/> \$1,000,000

22. Cresford and the plaintiffs agreed that for each project, 50% of the Bonus Commission would be payable within a reasonable period following project launch, and the remaining 50% upon registration of the project's condominium corporation. The plaintiffs had a trusting relationship with Athanasoulis and were invested in Cresford's success, and so did not insist on a firm deadline for payment of the first 50% of each Bonus Commission.

23. In early December 2019, the plaintiffs and Athanasoulis took steps to memorialize the unpaid Bonus Commissions that the plaintiffs had earned. The plaintiffs each executed a Contracting Services Agreement, with amending schedules that confirmed the Bonus

Commissions payable for those projects. Athanasoulis signed each contract on behalf of Cresford (Rosedale) Developments Inc., acting as agent for the relevant Cresford project companies. The parties dated the schedules to reflect the approximate date on which the Bonus Commissions had been awarded, although the agreements were executed in December 2019.

24. The plaintiffs and Athanasoulis used template agreements without the assistance of counsel. The primary purpose of these written agreements was to memorialize the Bonus Commission amounts previously agreed to orally. They did not intend to alter any terms of those prior agreements. To the extent that the written agreements are interpreted to do so, the plaintiffs seek an order that those agreements be rectified.

25. By that point, Cresford's business was in financial distress and had failed to pay commissions owing to cooperating agents from other brokerages. Casey failed to provide a clear plan to address these issues. As Cresford's face in the broker community, the plaintiffs' professional reputations began to suffer. Athanasoulis' management authority was removed after she raised concerns about the deteriorating situation at Cresford.

D. Cooperating Commissions

26. In addition to selling new units in the Cresford projects, the plaintiffs also acted as cooperating agents on behalf of some buyers of the units. Like other cooperating agents, the plaintiffs earned commissions on those sales, which were set out in the relevant agreements of purchase and sale and recorded in the trade sheets maintained by Cresford Real Estate. These commissions were payable 50% when the agreement of purchase and sale became firm and 50%

when the sale of the unit successfully closed. Cresford Real Estate invoiced the relevant Cresford project company seller for the cooperating commission, which was payable to the agent.

27. The plaintiffs earned the following cooperating commissions on purchases of units in Cresford projects (the **Cooperating Commissions**):

Agent	Project	Cooperating Commission
Mike Catsiliras	Clover	\$20,753
	33 Yorkville	\$168,394
	YSL	\$107,001
Total		<hr/> \$296,147
Sarven Cicekian	33 Yorkville	\$103,488
Total		<hr/> \$103,488

28. As of January 2020, 50% of these cooperating commissions (\$199,818) were due and payable to the plaintiffs, with the balance payable on the closing of the relevant units.

E. Broker Pool Commissions

29. Cresford’s agents also facilitated the resale and lease of Cresford Project units. For such transactions, Cresford Real Estate would credit the resulting commission to a “pool” of commissions. Half of the pooled commissions was payable to Cresford, and the remaining half was divided equally between Cresford’s agents. As of January 2020, Cresford Real Estate owed Cicekian and Catsiliras \$93,471 and \$88,471 respectively in these shared broker pool commissions (the **Broker Pool Commissions**).

F. Other Commissions

30. The plaintiffs also earned commissions, payable by Cresford Real Estate on a resale/assignment transaction carried out by Cicekian (in an amount of \$24,500) and a lease transaction carried out by Catsiliras (in an amount of \$1,000) (the **Other Commissions**).

G. The Plaintiffs' Departure from Cresford

31. The plaintiffs dedicated themselves to Cresford's business and were an instrumental part of the marketing and sale of Cresford's projects. When Cresford had issues with its cash flow, the plaintiffs did not insist on immediate payment of their bonuses and commissions. They were invested in the success of Cresford's enterprises.

32. Over time, the plaintiffs became disenchanted with the way in which Cresford was carrying on business, including its failure to pay third party agent commissions from sales of Cresford project units. The plaintiffs began to be bombarded with agents' demands for payment and found themselves having to defend Cresford, when they themselves were owed over \$1 million in commissions. The plaintiffs repeatedly insisted that Cresford meet its financial obligations to these other agents and their professional reputations deteriorated when Cresford refused to do so.

33. In December 2019, Cicekian requested payment of the commissions that he had earned to date. By the end of the year, Cresford had still failed to pay the plaintiffs, and refused to provide a date by which it would do so. By so doing, Cresford constructively dismissed the plaintiffs.

34. On January 2, 2020, the plaintiffs advised that as a result of non-payment and the deteriorating situation at Cresford, they would "resign" their positions effective in two weeks. As a matter of law, however, the plaintiffs were constructively dismissed and did not resign. Shortly

afterwards, Casey advised each of them that they were not to return to work. Cicekian therefore ceased acting as broker of record for Cresford Real Estate effective January 6, 2020, as he could no longer carry out those responsibilities.

35. After their departure, the plaintiffs detailed the amount of the overdue Broker Pool and Other Commissions and demanded that they be paid. The plaintiffs had previously issued invoices for the Cooperating Commissions. The plaintiffs also demanded a firm timeline for when the Bonus Commissions would be paid to them.

36. Mann confirmed that the amounts of Broker Pool and Other Commissions claimed were correct. However, he advised that Cresford would withhold payment until Cicekian signed the necessary documents to transfer Cresford Real Estate to another broker of record. Cicekian did so, but Mann nevertheless failed to authorize payment of the outstanding commissions despite his representation that he would do so.

37. As of the date of this statement of claim, Cresford has failed to make any payments of the outstanding amounts owing to them.

H. Breach of Contract

38. The plaintiffs performed in good faith the services asked of them by Cresford. Despite the plaintiffs' repeated demands, Cresford has breached its obligation to pay the commissions owing, including the Cooperating Commissions, the Broker Pool Commissions, and the Other Commissions.

39. In addition, each of the relevant Cresford companies undertook to pay the Bonus Commissions owed to the plaintiffs for their efforts in marketing their units, as memorialized in the written bonus agreement. These defendants have breached their obligation to pay the first installments of the Bonus Commissions that are immediately owing and have repudiated their obligation to pay the second installment of those commissions.

I. Constructive Dismissal

40. By persistently refusing to honour the plaintiffs' employment entitlements, Cresford implemented significant changes to the plaintiffs' employment. The essential terms and conditions of the plaintiffs' employment substantially changed as a consequence of Cresford's actions.

41. Cresford did not consult the plaintiffs before implementing these changes. Rather, Cresford continually delayed and renege on its promises to induce the plaintiffs to continue working for Cresford.

42. As pleaded at paragraph 32 to 34 above, these changes to the plaintiffs' employment, imposed by Cresford, amount to constructive dismissal. The changes were substantial and detrimental, and entitled the plaintiffs to terminate their contracts of employment and claim damages in lieu of reasonable notice.

43. Cresford has failed to pay the plaintiffs pay in lieu of notice of termination, who are entitled to 24 months' salary, vacation entitlements, and other employment benefits, in an amount to be particularized prior to trial.

J. Oppression

44. The plaintiffs reasonably expected that the corporate defendants would manage their affairs in accordance with their legal obligations, including their obligation to act with a view to the best interests of the corporation. The plaintiffs reasonably expected that the corporate defendants would use the funds that it had earmarked to pay broker commissions for that purpose.

45. Instead, the corporate defendants withheld funds from Cresford Real Estate in order to address the deteriorating financial condition of Cresford's business. In carrying out the conduct described above, the defendants conducted the corporations' affairs in a manner that was oppressive, unfairly prejudicial and unfairly disregarded the interests of the plaintiffs.

46. By causing, permitting or acquiescing to this conduct and by misrepresenting and concealing it, Casey and Mann acted oppressively towards the plaintiffs in bad faith. It is appropriate to order a personal remedy against them because they personally benefited from withholding those funds to benefit other corporations under their control, they breached their duties to the corporation, and a remedy ordered against only Cresford Real Estate may prejudice the corporation's other creditors.

K. Liability under the *OBCA*

47. At the material times, Casey was a director of each of the Cresford companies. Under section 131 of the *OBCA*, he is liable to the plaintiffs for all debts not exceeding six months' wages that became payable while he was a director for the services performed by the plaintiffs for Cresford, including all amounts claimed in this action.

L. Place of Trial

48. The plaintiffs propose that this action be tried in Toronto.

NAYMARK LAW

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Lawyers for the Plaintiffs,
Sarven Cicekian and Mike Catsiliras

CICEKIAN et. al.
Plaintiffs

- and -

CRESFORD REAL ESTATE CORPORATION et. al.
Defendants

Court File No. Court File No. CV-20-00637543-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**
PROCEEDING COMMENCED AT TORONTO

AMENDED STATEMENT OF CLAIM

NAYMARK LAW

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Lawyer for the Plaintiffs, Sarven Cicekian and Mike
Catsiliras

Attachment 2

CONTRACTING SERVICES AGREEMENT

BETWEEN:

Cresford (Rosedale) Developments Inc, a company having its office at 170 Merton Street, Toronto, ON M4S 1A1

(hereinafter referred to as "Cresford")

-And-

Sarven Cicekian

(hereinafter referred to as the "Contractor")

WHEREAS the Company agrees to contract for the services of the Contractor, and the Contractor agrees to enter a contract for provision of such services;

NOW THEREFORE, in the consideration of the mutual covenants and agreements herein contained, the parties agree, each with the other, as follows:

1. Commencement

Service under this Agreement shall commence on September 1, 2017 and shall continue until terminated as provided in paragraph 7.

Terms are as follows:

- a. The Contractor will receive a monthly service fee in the amount of FIVE THOUSAND DOLLARS, plus HST, (\$5000 + HST) to be paid semi-monthly on the 15th and 30th of each month (or the closest business day). Invoices will require a minimum of 5 business days for processing. Invoices submitted late may result in delayed payment.
- b. The Contractor will receive a commission, as outlined in the attached Schedule A, on the firm sale of the units for projects by Cresford as outlined in Schedule A.
- c. Commission is payable per the attached Schedule A.
- d. No commission is payable on any corporate head office or insider sales, unless otherwise stated and agreed to.
- e. Service fees and commissions are project defined and are subject to change. Any change shall be reflected in writing, requiring both the Contractor and an authorized Cresford signing officer to sign and acknowledge said changes.
- f. The Contractor is entitled to enroll in the company's health benefit program for contractors. The Contractor shall not be entitled to any other benefits or any other compensation other than said health benefits, the monthly service fee noted in paragraph 1a and the commission noted in Schedule A.
- g. The Contractor shall be entitled to remit for certain pre-approved expenses, if applicable.
- h. This Agreement supersedes any other agreement, whether oral, written or otherwise, previously made between you and Cresford.

2. Status

The Contractor is, for all intents and purposes, considered to be an independent real estate contractor. As such, you are not required to work exclusively for Cresford. It is understood and agreed that there is no employer-employee relationship between Cresford and the Contractor, and nothing shall be construed to create such a relationship.

While the Contractor agrees to exercise his/her attention and efforts in performing the services listed in paragraph 1 herein, the Company agrees that during the term of the Contract the Contractor is free to provide services to other organizations on the condition that the provision of such services is not provided to businesses or clients who offer related services in Ontario or who are competitors of the Company in Ontario without prior notification and that such services does not interfere with the performance of services hereunder and does not bring the Contractor into a conflict of interest or perception of a conflict of interest with the Company or his/her contract with the Company.

The Contractor shall be responsible and assumes full liability for all monies owing by him on account of any and all statutory obligations, including monies owed as income tax and H.S.T.

The Contractor represents and warrants that he/she is an independent Contractor. This is not a contract of employment and the Contractor shall not be treated as if he/she had an employment relationship with the Company. The Contractor covenants and agrees to save harmless and indemnify the Company from and against all claims, including charges, taxes, penalties or demands which may be made by the Minister of National Revenue requiring the Company to pay income tax under the *Income Tax Act (Canada)* in respect of income tax payable by the Contractor, and in respect of any and all claims, including charges, taxes, penalties or demands which may be made on behalf of or related to the Employment Insurance Commission, the Ministry of Labour, the Canada Pension Commission or any other statutory body under the applicable Statutes and Regulation, with respect to any amount which has been paid or may, in the future, be found to be payable by the Company to the Contractor.

3. Commissions

The Contractor shall receive commissions in accordance with Section 1 or as otherwise provided for in this Agreement. All payments due the Contractor shall be paid within 45 days of the receipt by Cresford of the corresponding commission, such payments are subject to any set-offs or deduction as otherwise provided for in this Agreement or in any schedule attached hereto.

4. Indemnity

The Contractor shall indemnify and save Cresford harmless from any and all expenses, costs, causes of action and damages, including legal expenses, incurred by Cresford resulting from: (i) any and all unauthorized acts or transactions by the Contractor or your employees, if any; (ii) negligent acts committed by the Contractor or your employees, if any, and (iii) any breach of this Agreement by the Contractor.

5. Confidentiality

The Contractor agrees that both during and after termination of this Agreement: (i) the Contractor will keep the business affairs of Cresford secret and confidential, including the Contractor's commission structure, (ii) the Contractor will not use any marketing and/or administrative reports, programs, purchase lists, copies, or other intellectual property of Cresford save and except for purposes of performing the Contractor's duties to Cresford pursuant to this Agreement, and (iii) during the term of this Agreement the Contractor agrees names of all prospects for the purpose of condominium sales obtained by the Contractor during the term of this Agreement are and shall remain property of Cresford and their clients and the Contractor shall not contact such prospects or in any way deal with them for the listing of sales or rental of condominium units or other real property without prior written approval from Cresford.

6. Errors and Omissions

The Contractor will secure and maintain proper Errors and Omissions Insurance in such amounts as required by Cresford at the Contractor’s sole expense and will provide proof of such coverage upon request by Cresford. If the Contractor fails to pay for such insurance coverage, the Contractor hereby authorizes Cresford to pay for it on your behalf and set-off said amounts against any amounts owed to the Contractor.

7. Termination

Cresford may terminate this Agreement for any reason whatsoever upon providing fifteen (15) days written notice to the Contractor. In addition to the forgoing, Cresford shall have the right to terminate this Agreement immediately upon written notice to the Contractor for any one or more of the following reasons (“Termination Event”):

- a. A material breach of any representation, warranty or covenant on part of the Contractor contained in this Agreement or any schedule attached hereto;

The Contractor may terminate this Agreement for any reason whatsoever upon providing Cresford with at least fifteen (15) days written notice, or in the event the contractor does not want to be reassigned as required by Cresford, the Contractor will be given fifteen(15) written notice.

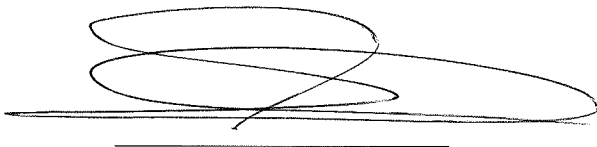
8. Severability

Every provision of this agreement is intended to be severable. If any term of provision is illegal or invalid for any reason whatsoever, such illegality shall not affect the validity of the remainder of this Agreement.

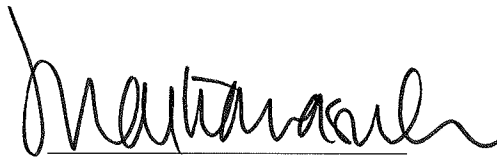
- 9. This Agreement shall be governed by and construed to be in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and each of us agrees to submit to the non-exclusive jurisdiction of the Courts of the Province of Ontario.

Paragraphs 1 through 9 and Schedule A are an integral part hereto. Both undersigned parties acknowledge that they have read all paragraphs and schedules of this agreement and they accept and agree to the terms thereof.

DATED at Toronto, this 2 day of September, 2017



Sarven Cicekian



Maria Athanasoulis
President, Marketing & Sales

Schedule A

Commission Structure for 33 YORKVILLE

1. A bonus commission of Five Hundred Thousand Dollars (\$500,000) will be payable to the Contractor for the 33 Yorkville Condominiums. The first 50% (\$250,000) will be payable after the Agreement of Purchase and Sale ("APS") becomes firm. The second 50% (\$250,000) will be payable upon successful final closing of the units. ("Deferred Commission").

If the Agreement is terminated due to a Termination Event or at the option of the Contractor, The Contractor shall forfeit any Deferred Commissions and/or bonuses due.

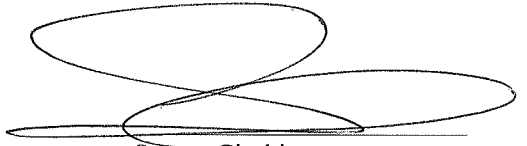
Schedule A – First Amendment

Commission Structure for YSL Condominiums


2. A bonus commission of Five Hundred Thousand dollars (\$500,000) will be payable to the Contractor for the YSL Condominiums. The first 50% (\$250,000) will be payable after the Agreement of Purchase and Sale (“APS”) becomes firm. The second 50% (\$250,000) will be payable upon successful final closing of the units. (“Deferred Commission”).

If the Agreement is terminated due to a Termination Event or at the option of the Contractor, The Contractor shall forfeit any Deferred Commissions and/or bonuses due.

DATED at Toronto, this 10 day of November, 2018



Sarven Cicekian



Maria Athanasoulis
President, Marketing & Sales

Attachment 3

Attachment 4

Attachment 5

20 - YG Limited Partnership
 AP - Accounts Payable / Claims
 Summary Aged Payables List
 As of Mar31/20

Aged by Invoiced Date

Code	Supplier Name	Net A/P	Current	31-60Days	61-90Days	Over90Days	Holdback
2460242	2460242 Ontario Inc.	40,466.02	24,536.65	23,929.37	0	0	0
2600024	2600024 Ontario Inc.	67,000.00	0	67,000.00	0	0	0
1STCHO	1st Choice Disposal	8,916.81	426.3	832.05	1,749.94	5,908.52	0
AECPAR	AEC Paralegal Corporation	593.25	0	0	0	593.25	0
AIMHOM	Aim Home Realty Inc	15,018.01	0	0	0	15,018.01	0
AIRBER	Aird & Berlis LLP	15,781.60	8,651.07	7,130.53	0	0	0
ALTGRO	Altus Group Limited	20,959.70	542.12	2,422.98	0	17,994.60	0
ALUINC	AlumaSafway, Inc	46,505.15	0	28,210.45	0	18,294.70	0
ARCALL	Architects Alliance	1,008,914.62	46,505.90	146,076.70	146,168.69	670,163.33	0
BAAGRO	Baaron Group Inc.	20,397.91	0	1,582.00	0	18,815.91	0
BACONS	BA Consulting Group Ltd.	6,844.99	2,178.08	2,895.63	0	1,771.28	0
BAYSTR	Bay Street Group Inc	45,737.98	0	0	0	45,737.98	0
BENCON	BENP Mortgage Investment Corp	39,267.12	0	0	0	39,267.12	0
BENCON	Bank Tom	2,007.72	0	492.79	0	1,514.93	0
BENJON	Bennett Jones LLP	44,825.62	0	243.3	4,439.49	40,142.83	0
BLAMCM	Blaney McMurtry LLP	100,056.60	0	8,142.96	0	91,913.64	0
BLICOU	Blizzard Courier Service Ltd.	335.5	0	0	0	335.5	0
BVDGRO	BVDA Group Ltd.	1,130.00	0	0	0	1,130.00	0
CANCAN	Canon Canada Inc.	37.9	0	37.9	0	0	0
CBSCAP	CBSC Capital Inc.	1,574.50	0	838.87	0	735.63	0
CITDOO	Citywide Door & Hardware Inc.	1,130.00	0	0	0	1,130.00	0
CITPER	The Treasurer, City of Toronto	500	0	500	0	0	0
CITREA	Cityscape Real Estate Ltd.	246,999.63	0	0	0	246,998.63	0
CLAREA	Homelife Classic Realty Inc	12,478.00	0	0	0	12,478.00	0
CONPLU	Re/Max Condo Plus Corp	16,358.00	0	0	0	16,358.00	0
CREBEL	Cresford Real Estate Corporation	6,759.00	0	0	6,759.00	0	0
DALLES	Dale & Lessmann LLP	982.38	982.38	0	0	0	0
DEKCORP	Dekla Corporation	0	0	0	0	0	25,000.00
ENBGAS	Enbridge Gas Inc.	0.01	0	0	0	0.01	0
ENTCOR	Entuitive Corporation	5,508.75	0	0	0	5,508.75	0
ERAARC	E.R.A. Architects Inc.	43,455.57	0	0	0	43,455.57	0
FEDWIR	Federal Wireless Communicatio	4,291.74	0	0	0	4,291.74	0
FORHIL	Forest Hill Real Estate Inc	30,876.00	0	0	0	30,876.00	0
FOSINT	Foster Interactive Inc.	1,627.20	0	0	813.6	813.6	0
FOUSEL	Four Seasons Hotel Toronto	97,930.35	0	0	0	97,930.35	0
GFLINF	GFL Infrastructure Goup Inc.	3,663,177.53	296,561.83	0	513,400.92	2,853,214.78	445,803.10
HERRES	Heritage Restoration Inc	393,005.53	0	0	0	393,005.53	0
HOMFRO	HomeLife Frontier Realty Inc.	25,376.00	0	0	0	25,376.00	0
HOMLAN	HomeLife Landmark Realty Inc.	1,669,032.01	0	0	0	1,669,032.01	0
HOMSTA	Home Standards Brickstone Rea	90,068.00	0	0	0	90,068.00	0
HOWGAS	Howe Gastmeier Chapnik Limite	668.11	0	0	0	668.11	0
HUNASS	Hunter & Associates Ltd.	2,923.88	0	0	0	2,923.88	0
HYDMIS	Toronto Hydro-Electric System	44,097.88	0	0	0	44,097.88	0
INNPAT	Innocon Partnership	50,239.12	0	0	1,296.34	48,942.78	0
INVHAR	Investments Hardware Limited	14,471.85	0	257.3	4,161.60	10,052.95	0
ISHERW	Isherwood	107,416.33	18,659.01	24,789.71	0	63,967.61	0
JABAST	Jablonsky, Ast and Partners	349,631.55	0	3,851.55	11,300.00	334,480.00	0
JANROS	JanetRosenberg&Studio Inc.	13,152.35	0	3,030.94	0	10,121.41	0
JDLREA	JDL Realty Inc.	20,478.00	0	0	0	20,478.00	0
JENHUG	Jensen Hughes Consulting Cana	34,317.01	18,002.14	0	0	16,314.87	0
KELWIL	Keller Williams Referred	23,036.00	0	0	0	23,036.00	0
KENREA	Century 21 Kennect Realty	53,036.00	0	0	0	53,036.00	0
KINQUA	Century 21 King's Quay Real E	37,594.00	0	0	0	37,594.00	0
KOHPED	Kohn Pedersen Fox Associates	1,836,000.00	0	0	0	1,836,000.00	0
KRMDES	Kramer Design Associates Limi	74,184.50	0	0	0	74,184.50	0
LAMASS	Lam & Associates Ltd.	129,925.39	0	31,194.40	39,103.39	59,627.60	0
LANREA	LandpowerReal Estate Ltd.	2,256,548.80	17,018.00	0	37,578.00	2,201,952.80	0
LEAEDG	Century 21 Leading Edge Realt	10,878.00	0	0	0	10,878.00	0
LERBAT	Lerch Bates	11,900.00	0	0	0	11,900.00	0
LIVPAT	Live Patrol Inc.	11,187.00	1,864.50	1,864.50	1,864.50	5,593.50	0
LIVREA	Living Realty Inc.	88,588.00	0	88,588.00	0	0	0
MASCHO	Master's Choice Realty, Inc.	379,298.00	0	0	0	379,298.00	0

20 - YG Limited Partnership
 AP - Accounts Payable / Claims
 Summary Aged Payables List
 As of Mar31/20

Aged by Invoiced Date

Code	Supplier Name	Net A/P	Current	31-60Days	61-90Days	Over90Days	Holdback
MCIPER	McIntosh Perry	218.09	0	0	0	218.09	0
MICBRO	Michael Bros. Excavating	1,582,858.80	38,442.60	307,540.80	653,524.20	583,351.20	155,640.00
	Mike Catsiliras	282,500.00				282,500.00	
MONSTE	Montana Steele	73,927.81	477.81	14,690.00	14,690.00	44,070.00	0
MULBAN	Mulvey & Banani Lighting Inc.	29,978.91	0	1,582.00	5,311.00	23,085.91	0
MUNMEC	Municipal Mechanical Contract	11,303.14	11,303.14	0	0	0	0
MYLBUR	Myles Burke	35,798.40	0	17,899.20	0	17,899.20	0
NAFCON	Naf-Muk Contracting Inc	2,439.67	0	0	0	2,439.67	0
NEWCON	Royal LePage - New Concept	85,770.01	15,018.01	0	0	70,752.00	0
NEWWOR	HomeLife New World Realty Inc	544,355.99	0	0	283,570.00	260,785.99	0
NORAME	North American Sign Company I	2,825.00	0	0	0	2,825.00	0
ODADET	The Odan/Detech Group Inc.	5,831.20	2,214.80	1,237.35	830.55	1,548.50	0
OTICAN	Otis Canada Inc.	4,912,110.00	0	0	0	4,912,110.00	483,000.00
PETCON	PETRA Consultants Ltd.	178,856.40	0	83,168.00	0	95,688.40	0
PMSVEN	PM Sheetmetal & Ventilation	26,442.00	0	0	0	26,442.00	2,600.00
POWREA	Powerland Realty, Brokerage	10,678.00	0	0	0	10,678.00	0
PRIDEM	Priestly Demolition Inc.	374,609.80	0	0	0	374,609.80	0
PRIVAT	PricewaterhouseCoopers LLP	19,266.50	0	0	0	19,266.50	0
RAVSUR	R. Avis Surveying Inc.	53,757.52	0	8,311.15	18,758.58	26,687.79	0
REAENT	RE/MAX Realty Enterprises Inc	72,090.00	0	0	0	72,090.00	0
REAONE	Real One Realty Inc.	181,936.00	0	0	91,768.00	90,168.00	0
REAREA	RE/MAX Realtron Realty Inc.	28,117.97	0	0	0	28,117.97	0
RECCLE	Reco Cleaning Services	62,376.57	0	10,664.94	0	51,711.63	0
REPLIM	Reprodux Limited	578.23	24.23	227.59	326.57	0	0
RIGATH	Right At Home Realty Inc.	10,678.00	0	0	0	10,678.00	0
	Rosa Trading Ltd.	565,000.00				565,000.00	
ROYELI	Royal Elite Realty Inc.,Broke	16,198.00	0	0	0	16,198.00	0
SAFMAN	Safeline Management Systems I	8,723.60	0	2,576.40	813.6	5,333.60	0
SEBSTE	Sebba Steel Construction Ltd.	86,075.49	0	12,147.50	0	73,927.99	0
SIGREA	Royal LePage - Signature Real	14,578.00	0	0	0	14,578.00	0
SPLCON	WSP Canada Inc.	24,025.14	6,630.28	14,127.26	2,055.47	51,216.13	0
STACON	Stantec Consulting Ltd.	1,463.26	0	0	0	1,463.26	0
STEREN	Stephenson's Rental Services	4,678.43	4,678.43	0	0	0	0
STRAGG	Strada Aggregates	27,075.99	11,780.66	0	0	15,295.33	0
THODOR	Thompson Dorfman Sweatman LLP	6,475.77	0	0	0	6,475.77	0
TRAFIR	Trace Fire Protection Inc.	-30	0	0	0	-30	0
TRAREA	Tradeworld RealtyInc.	67,770.00	0	0	0	67,770.00	0
ULTREA	ReMax Ultimate Realty Inc.	16,718.00	0	0	0	16,718.00	0
VASDES	V.A. Siu Design Consultants	96,050.00	0	0	0	96,050.00	0
VERSTR	Verdi Structures Inc	718,680.00	718,680.00	0	0	0	50,000.00
WESGUA	Westmount Guarantee Services	444,155.00	0	0	222,955.00	221,200.00	0
YOUREN	You-Go Rental & Sales	2,808.71	411.32	476.39	548.05	1,372.95	0

Total Report 24,093,159.03 1,245,589.26 919,340.51 2,062,786.49 19,865,442.77 1,162,043.10

Less: Payments
 Westmount -444,155.00

Add: Accruals
 Taron enrolment 1,510,000.00
 Tie-back commitment 1,875,000.00

Holdbacks 1,162,043.00

28,196,047.03

TAB B

SCHEDULE "B" – PRIORITY OF CLAIM

As a joint employer, YSL failed to pay Cicekian wages, salaries, commissions or compensation for services rendered during the period beginning on the day that is six months before the date of the initial bankruptcy event. This amount exceeded \$2,000.00. Cicekian accordingly has a priority claim for \$2,000.00 pursuant to sections 81.3 and 136(1)(d) of the BIA.

EXHIBIT "A" – AMENDED PARTICULARS OF PROOF OF CLAIM

1. THE CLAIMS (together, the **Claims**) as against YG Limited Partnership and YSL Residences Inc. (together, **YSL**) are for:

- (a) \$262,500 in bonuses earned by Giannakopoulos as employment remuneration in 2017 and 2019; and
- (b) \$75,000 in bonuses earned by Giannakopoulos in 2020;
- (c) \$19,615 for 17 used vacation days; and
- (d) \$87,500, being 50% of the \$175,000 retention bonus earned for remaining with Cresford after January 2020, reduced to reflect contingencies associated with this claim.

2. Total value of the Claims described above is \$444,615 ~~\$532,115~~.

A. OVERVIEW

3. Louie Giannakopoulos (**Giannakopoulos**) was the Vice President, Construction at Cresford, responsible for overseeing and carrying out the construction of its developments. He was employed in common by the various Cresford companies for which he worked, including YSL, until he left Cresford in January 2021.

4. Giannakopoulos earned significant bonuses for assisting in Cresford projects, which remained unpaid by Cresford. In September 2020, Giannakopoulos and Cresford, including YSL,

entered into a settlement agreement, in which Cresford acknowledged and agreed to pay Giannakopoulos's outstanding bonuses and certain other amounts owing to him. Cresford failed to perform the settlement and pay the amounts owing to Giannakopoulos.

5. As Giannakopoulos's common employer, YSL is jointly and severally liable for his outstanding employment entitlements. Cresford and YSL acknowledged these outstanding amounts in writing in the settlement agreement and they are beyond dispute.

B. GIANNAKOPOULOS'S EMPLOYMENT BY CRESFORD AND DUTIES WITH YSL

6. In February 2014, Cresford hired Giannakopoulos as Senior Project Manager for Construction. Giannakopoulos was promoted to Director, Construction in January 2015 and to Vice President, Construction in February 2018. He served in that role until his departure in January 2021, described below.

7. In January 2014, Giannakopoulos executed an employment agreement (included as **Attachment 1**). Under the employment agreement drafted by Cresford, Giannakopoulos' employer was identified as "Cresford Developments", which is not a legal entity or registered business name. Rather, it is a generic term applying to the entire Cresford group of companies.

8. Under the 2014 employment agreement, Giannakopoulos was entitled to:

- (a) a base annual salary of \$170,000;
- (b) an annual bonus payment of up to 25% of his base salary, 50% of which was guaranteed and 50% of which was discretionary based on overall performance.

9. Cresford and Giannakopoulos never amended the original employment agreement. By 2020, however, Giannakopoulos' base annual salary had increased to \$300,000, commensurate with his role as Vice President, Construction. He remained entitled to the annual 25% bonus and received the full 25% bonus in each year that he worked for Cresford.

10. During the course of his employment, Giannakopoulos performed work for YSL and for other Cresford companies carrying on real estate business, including the Clover, Halo, and 33 Yorkville projects (together with YSL, Cresford (Rosedale) Developments Inc. and EDRP, the **Cresford Employers**). Giannakopoulos had primarily responsibility for the construction of the YSL project and for the due diligence processes carried out throughout 2020 with regard to YSL.

11. Because Giannakopoulos worked for all of the Cresford Employers, he was employed in common by them, including YSL, within the meaning set out in *Downtown Eatery (1993) Ltd. v. Ontario*, [2001 CanLII 8538](#) (Ont. C.A.) and *Nortel Networks Corporation (Re)*, [2016 ONSC 6030](#) because:

- (a) The Cresford Employers were under the common control of the same managers, who acted on behalf of each of the Cresford Employers;
- (b) YSL and each of the relevant project companies directed and exercised effective control over his activities relating to the associated real estate projects;
- (c) Giannakopoulos signed contracts with consultants, trades and others on behalf of YSL;

- (d) Cresford held Giannakopoulos out as a representative of YSL in the course of Giannakopoulos's employment, including during Concord's due diligence process on the YSL project; and
- (e) Some of Giannakopoulos's bonus entitlements involved credits on units purchased from project companies. As described below, Cresford agreed to pay Giannakopoulos's bonuses from the funds of different Cresford Employers, including YSL.

12. Each of the Cresford employers, including YSL, is jointly and severally liable for the employment obligations owed to Giannakopoulos.

13. An integral part of Giannakopoulos's employment compensation were significant bonuses, which included both cash bonuses and credits granted on the purchase of units in Cresford condominium projects. By July 2020, Giannakopoulos had earned significant unpaid bonuses as a result of his employment:

- (a) 2017 earned bonus of \$200,000, which was to be received as a \$200,000 credit against Giannakopoulos's purchase of a unit in the 33 Yorkville project; and
- (b) 2019 earned bonuses of \$62,500.

14. Giannakopoulos also earned bonuses under his employment agreement for the work performed for the Cresford Employers in the course of 2020. Giannakopoulos had been paid the full 25% bonus in each of the years that he previously worked. He earned the same 25% bonus in

2020 by carrying out extraordinary responsibilities following the financial difficulties suffered by Cresford, contributions that were recognized by Cresford.

15. On January 6, 2020, Daniel C. Casey (**Casey**), the principal of Cresford, called a meeting of five senior employees including Giannakopoulos and granted each of them a retention bonus of \$250,000 on behalf of Cresford. He advised that the intention of this bonus was to reward these senior employees for seeing Cresford through “tough times.” By this time, Cresford had begun to experience financial distress. Casey provided Giannakopoulos with a cheque for \$75,000 to satisfy part of that bonus amount. He promised that Cresford would pay the remaining bonus amount of \$175,000 at a later date.

C. THE SETTLEMENT AGREEMENT

16. As detailed below, Giannakopoulos and Cresford entered into a settlement agreement for the payment of overdue amounts owing to him in September 2020.

17. In July 2020, Giannakopoulos continued to work for Cresford, but his outstanding bonuses were unpaid and Cresford was in financial distress. Cresford’s Clover, Yorkville and Halo projects were in insolvency proceedings. Cresford was in the process of negotiating the sale of Cresford’s remaining real estate properties, including the sale of YSL to a third party buyer, Empire.

18. Giannakopoulos and Cresford discussed arrangements to satisfy Giannakopoulos’s employment entitlements, but were unable to reach an agreement. Cresford asked an advisor, Joe Bolla (**Bolla**), to mediate the issue. The parties provided Bolla with information about Giannakopoulos’s outstanding entitlements.

19. On July 23, 2020, Bolla sent a without prejudice settlement proposal, for discussion purposes (included as **Attachment 2**). He described the proposal as his determination of “what was fair” in the circumstances, as a “friend of Cresford.” The proposal acknowledged the extraordinary efforts made by Giannakopoulos and other employees during this period. Bolla included as a schedule his proposal for how a portion of Giannakopoulos’s employment entitlements should be paid.

20. Bolla’s settlement proposal acknowledged the outstanding 2017 and 2019 bonuses owed to Giannakopoulos. The proposal also acknowledged Giannakopoulos’s claims for his 2020 bonus, but did not propose to pay these amounts due to financial difficulties.

21. Giannakopoulos and Cresford exchanged without prejudice communications to resolve Giannakopoulos’s claims, including his additional claims for his 2020 bonus.

22. On September 8, 2020, Cresford and Giannakopoulos reached a full and final settlement of Giannakopoulos’s claims (included as **Attachment 3**). Cresford agreed to pay \$262,500 to Giannakopoulos, which would be paid from the closings of the YSL project, the Clover project, and the conveyance of 69 Hayden Street pursuant to an irrevocable direction provided to Cresford’s counsel.

23. The settlement agreement was signed by Daniel Casey on behalf of “[the] Cresford Entities including Limited Partnerships”, which included YSL. The settlement agreement specifically carved-out Giannakopoulos’s claims for his 2020 bonus and for unpaid vacation, which were to be addressed in further negotiations after the settlement.

24. Giannakopoulos appears never to have signed the agreement but had previously communicated his acceptance of its substantive terms by email (included as **Attachment 4**). The parties acted in accordance with the agreement.

25. On September 14, 2020, pursuant to the settlement agreement, Daniel Casey signed an amended irrevocable direction to YSL's counsel to pay Giannakopoulos the agreed amounts from the proceeds of sale of YSL or any other similar sale (included as **Attachment 5**).

26. As part of the settlement agreement, Cresford gave notice to Giannakopoulos that he would be terminated effective February 1, 2021. Giannakopoulos continued to work in his role with Cresford during the intervening period. Among other responsibilities, he provided extensive information to Concord on behalf of YSL during Concord's due diligence process. He was also heavily involved in the sale of the remaining assets of Cresford's Casa 3 project.

27. On January 18, 2021, Giannakopoulos sent an email advising Cresford that he would cease working on January 31, 2021 and claiming payment of the outstanding \$262,500 in bonuses under the settlement agreement, the unpaid 2020 bonuses and 17 days of unused vacation (included as **Attachment 6**).

28. Giannakopoulos had previously confirmed that he was owed outstanding vacation time in an email to Cresford on December 21, 2020 (included as **Attachment 7**). Cresford never paid compensation for these 17 unused vacation days, whose value of \$19,615 remains outstanding.

D. FAILURE TO PERFORM THE SETTLEMENT AGREEMENT

29. Under the settlement agreement, YSL and Cresford were required to pay the settlement payments by October 15, 2020. However, YSL and Cresford failed to pay Giannakopoulos's outstanding 2017 and 2019 bonuses totaling \$262,500.

30. Giannakopoulos sent a series of emails waiving Cresford's delay and extending the deadline for payment, which are included as **Attachment 8**. Despite these extensions, Cresford has failed to pay the \$262,500 in bonuses due under the settlement agreement.

E. BREACH OF CONTRACT

31. Under his Employment Agreement, Giannakopoulos was entitled to the outstanding bonuses that had accrued since 2017 but which remained unpaid. YSL and the other Cresford Employers were contractually required to pay these bonuses, but failed to do so. There is no dispute that the 2017 and 2019 bonuses were payable and owing, as was acknowledged in the settlement agreement.

32. YSL and the other Cresford Employers have also failed to pay Giannakopoulos's 2020 bonus of \$75,000, equal to 25% of Giannakopoulos's base salary of \$300,000.

33. YSL and the other Cresford Employer failed to pay compensation for Giannakopoulos' 17 unused vacation days, whose value of \$19,615 remains outstanding.

34. Finally, YSL and the other Cresford Employers failed to pay the \$175,000 retention bonus that Casey had promised to Giannakopoulos in January 2020, despite Giannakopoulos's extraordinary service to Cresford. PwC reduced by 50% a claim by another employee (Ryan

Millar) also promised this bonus in the Clover and Halo proceedings, to account for contingencies associated with the claim. Giannakopoulos' corresponding reduction of this claim by 50% to account for contingencies is without prejudice to his right to claim the full amount of the bonus in other proceedings.

35. Giannakopoulos accordingly submits this claim for these outstanding amounts.

Bankruptcy and Insolvency Act ("Act")

Proof of Claim

(Section 50.1, 81.5, 81.6, Subsections 65.2(4), 81.2(1), 81.3(8), 81.4(8), 102(2), 124(2), 128(1), and Paragraphs 51(1)(e) and 66.14(b) of the Act)

All notices or correspondence regarding this claim must be forwarded to the following address:

Creditor Name:	<u>Louie Giannakopoulos</u>	Telephone:	<u>(416) 768-9994</u>
Address:	<u>c/o James Gibson, Naymark Law</u>	Fax:	<u>(647) 660-5060</u>
	<u>171 John Street, Suite 101,</u>	Email:	<u>jgibson@naymarklaw.com</u>
	<u>Toronto, ON, M5T 1X3</u>		
Account No.:	<u>Nil</u>		

In the matter of the bankruptcy (or the proposal, or the receivership) of YSL Residences Inc. and YG Limited Partnership (*name of debtor*) of the City of Toronto, Ontario (*city and province*) and the claim of Louie Giannakopoulos, creditor.

I, Louie Giannakopoulos (*name of creditor or representative of the creditor*), of City of Vaughan, Ontario (*city and province*), do hereby certify:

1. That I am a creditor of the above-named debtor (~~or that I am _____ (*state position or title*) of _____ (*name of creditor*)~~).
2. That I have knowledge of all the circumstances connected with the claim referred to below.
3. That the debtor was, at the date of bankruptcy, (or the date of the receivership, or in the case of a proposal, the date of the notice of intention or of the proposal, if no notice of intention was filed), namely the 30th day of April, 2021, and still is, indebted to the creditor in the sum of **\$532,115.00**, as specified in the statement of account (or affidavit) attached and marked **Schedule "A"**, after deducting any counterclaims to which the debtor is entitled. (The attached statement of account or affidavit must specify the vouchers or other evidence in support of the claim.)
4. (Check and complete appropriate category.)

A. UNSECURED CLAIM (AFFECTED CLAIM) OF \$532,115.00 (other than as a customer contemplated by Section 262 of the Act)
That in respect of this debt, I do not hold any assets of the debtor as security and
(Check appropriate description.)

Regarding the amount of \$530,115.00, I do not claim a right to a priority.

Regarding the amount of \$2,000.00, I claim a right to a priority under Section 136 of the Act.
(Set out on an attached sheet details to support priority claim.)
See **Schedule "B"**.

B. SECURED CLAIM OF \$0.00
That in respect of this debt, I hold assets of the debtor valued at \$ _____ as security, particulars of which are as follows:
(Give full particulars of the security, including the date on which the security was given and the value at which you assess the security, and attach a copy of the security documents.)

C. CONSTRUCTION LIEN CLAIM OF \$0.00
That in respect of this debt I have registered a lien on title to the Debtors' real property in accordance with the *Construction Act* (Ontario), particulars of which are as follows:

(Give full particulars of the lien, including the date on which the lien was registered and the value secured by such lien, and attach a copy of any relevant documents, including any statement of claim).


1. That, to the best of my knowledge, I am (or the above-named creditor is) (or am not or is not) related to the debtor within the meaning of Section 4 of the Act, and have (or has) (or have not or has not) dealt with the debtor in a non- arm's-length manner.
2. That the following are the payments that I have received from, the credits that I have allowed to, and the transfers at undervalue within the meaning of Subsection 2(1) of the Act that I have been privy to or a party to with the debtor within the three months (or, if the creditor and the debtor are related within the meaning of Section 4 of the Act or were not dealing with each other at arm's length, within the 12 months) immediately before the date of the initial bankruptcy event within the meaning of Subsection 2(1) of the Act: (Provide details of payments, credits and transfers at undervalue.)

Dated at City of Toronto, Ontario, this 11th day of June, 2021.

Marco Mancuso

Digitally signed by Marco Mancuso
DN: C=CA, E=mancuso@hotmail.com,
CN=Marco Mancuso
Date: 2021.06.11 13:45:48-04'00'

Witness


Creditor Authorized Signatory
Louie Giannakopoulos

NOTE: If an affidavit is attached, it must have been made before a person qualified to take affidavits.

WARNINGS: A trustee may, pursuant to Subsection 128(3) of the Act, redeem a security on payment to the secured creditor of the debt or the value of the security as assessed, in a proof of security, by the secured creditor.

Subsection 201(1) of the Act provides severe penalties for making any false claim, proof, declaration or statement of account.

DIRECTIONS FOR COMPLETION OF THIS FORM ARE ON THE REVERSE SIDE

CONDITIONAL CLAIM ADDENDUM

By checking the box below, you are electing for your Claim to be treated as a Conditional Claim (as defined in the Proposal). By electing for your claim to be treated as a Conditional Claim, you are recognizing that:

- a) One or more contractual conditions in your arrangements with the Company were not satisfied as at April 30, 2021 (referred to in the Proposal as "Conditional Claim Conditions");
- b) You are undertaking to complete all Conditional Claim Conditions and provide proof of such completion by no later than the Conditional Claim Completion Deadline; and
- c) You understand that the failure to complete all Conditional Claim Conditions by the Conditional Claim Completion Deadline will result in your Claim being fully, finally and irrevocably disallowed.

I hereby elect for my Claim to be treated as a Conditional Claim:

Creditor Authorized Signatory

TAB A

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
COMMERCIAL LIST

IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY
ACT, R.S.C. 1985, C. B-3, AS AMENDED

IN THE MATTER OF THE NOTICES OF INTENTION TO
MAKE A PROPOSAL OF YG LIMITED PARTNERSHIP
AND YSL RESIDENCES INC.

Applicants

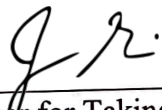
AFFIDAVIT OF LOUIE GIANNAKOPOULOS
(Sworn on June 11, 2021)

I, LOUIE GIANNAKOPOULOS, of the City of Vaughan, Ontario, MAKE OATH AND SAY:

1. I am a creditor in this proceeding, and as such have knowledge of the matters contained in this affidavit. Where my knowledge is based on information from other sources, I state the source of that information and believe the information to be true.
2. I confirm that the information contained in the particulars of claim attached as **Exhibit "A"**, together with the supporting attachments, is accurate and I adopt it for the purposes of this affidavit.

3. I make this affidavit in support of a proof of claim in this proceeding, and for no other or improper purpose.

SWORN by videoconference technology by the deponent, located in the City of Vaughan, Ontario, before the commissioner, located in the City of Toronto, Ontario in accordance with O. Reg. 431/20, Adminstrating Oath Remotely on June 11, 2021



Commissioner for Taking Affidavits
JAMES GIBSON



LOUIE GIANNAKOPOULOS

THIS IS EXHIBIT "A" REFERRED TO
IN THE AFFIDAVIT OF LOUIE GIANNAKOPOULOS
SWORN BEFORE ME, THIS 11TH DAY OF JUNE, 2021

A handwritten signature in black ink, appearing to read "J. R.", positioned above a horizontal line.

JAMES GIBSON

A Commissioner Etc.

EXHIBIT “A” – PARTICULARS OF PROOF OF CLAIM
--

1. THE CLAIMS (together, the **Claims**) as against YG Limited Partnership and YSL Residences Inc. (together, **YSL**) are for:

- (a) \$262,500 in bonuses earned by Giannakopoulos as employment remuneration in 2017 and 2019; and
- (b) \$75,000 in bonuses earned by Giannakopoulos in 2020;
- (c) \$19,615 for 17 used vacation days; and
- (d) the \$175,000 retention bonus earned for remaining with Cresford after January 2020.

2. Total value of the Claims described above is \$532,115.

A. OVERVIEW

3. Louie Giannakopoulos (**Giannakopoulos**) was the Vice President, Construction at Cresford, responsible for overseeing and carrying out the construction of its developments. He was employed in common by the various Cresford companies for which he worked, including YSL, until he left Cresford in January 2021.

4. Giannakopoulos earned significant bonuses for assisting in Cresford projects, which remained unpaid by Cresford. In September 2020, Giannakopoulos and Cresford, including YSL, entered into a settlement agreement, in which Cresford acknowledged and agreed to pay

Giannakopoulos's outstanding bonuses and certain other amounts owing to him. Cresford failed to perform the settlement and pay the amounts owing to Giannakopoulos.

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B. GIANNAKOPOULOS'S EMPLOYMENT BY CRESFORD AND DUTIES WITH YSL

6. In February 2014, Cresford hired Giannakopoulos as Senior Project Manager for Construction. Giannakopoulos was promoted to Director, Construction in January 2015 and to Vice President, Construction in February 2018. He served in that role until his departure in January 2021, described below.

7. In January 2014, Giannakopoulos executed an employment agreement (included as **Attachment 1**). Under the employment agreement drafted by Cresford, Giannakopoulos' employer was identified as "Cresford Developments", which is not a legal entity or registered business name. Rather, it is a generic term applying to the entire Cresford group of companies.

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11. Because Giannakopoulos worked for all of the Cresford Employers, he was employed in common by them, including YSL, within the meaning set out in *Downtown Eatery (1993) Ltd. v. Ontario*, [2001 CanLII 8538](#) (Ont. C.A.) and *Nortel Networks Corporation (Re)*, [2016 ONSC 6030](#) because:

- (a) The Cresford Employers were under the common control of the same managers, who acted on behalf of each of the Cresford Employers;
- (b) YSL and each of the relevant project companies directed and exercised effective control over his activities relating to the associated real estate projects;
- (c) Giannakopoulos signed contracts with consultants, trades and others on behalf of YSL;

- (d) Cresford held Giannakopoulos out as a representative of YSL in the course of Giannakopoulos's employment, including during Concord's due diligence process on the YSL project; and
- (e) Some of Giannakopoulos's bonus entitlements involved credits on units purchased from project companies. As described below, Cresford agreed to pay Giannakopoulos's bonuses from the funds of different Cresford Employers, including YSL.

12. Each of the Cresford employers, including YSL, is jointly and severally liable for the employment obligations owed to Giannakopoulos.

13. An integral part of Giannakopoulos's employment compensation were significant bonuses, which included both cash bonuses and credits granted on the purchase of units in Cresford condominium projects. By July 2020, Giannakopoulos had earned significant unpaid bonuses as a result of his employment:

- (a) 2017 earned bonus of \$200,000, which was to be received as a \$200,000 credit against Giannakopoulos's purchase of a unit in the 33 Yorkville project; and
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14. Giannakopoulos also earned bonuses under his employment agreement for the work performed for the Cresford Employers in the course of 2020. Giannakopoulos had been paid the full 25% bonus in each of the years that he previously worked. He earned the same 25% bonus in

2020 by carrying out extraordinary responsibilities following the financial difficulties suffered by Cresford, contributions that were recognized by Cresford.

15. On January 6, 2020, Daniel C. Casey (**Casey**), the principal of Cresford, called a meeting of five senior employees including Giannakopoulos and granted each of them a retention bonus of \$250,000 on behalf of Cresford. He advised that the intention of this bonus was to reward these senior employees for seeing Cresford through “tough times.” By this time, Cresford had begun to experience financial distress. Casey provided Giannakopoulos with a cheque for \$75,000 to satisfy part of that bonus amount. He promised that Cresford would pay the remaining bonus amount of \$175,000 at a later date.

C. THE SETTLEMENT AGREEMENT

16. As detailed below, Giannakopoulos and Cresford entered into a settlement agreement for the payment of overdue amounts owing to him in September 2020.

17. In July 2020, Giannakopoulos continued to work for Cresford, but his outstanding bonuses were unpaid and Cresford was in financial distress. Cresford’s Clover, Yorkville and Halo projects were in insolvency proceedings. Cresford was in the process of negotiating the sale of Cresford’s remaining real estate properties, including the sale of YSL to a third party buyer, Empire.

18. Giannakopoulos and Cresford discussed arrangements to satisfy Giannakopoulos’s employment entitlements, but were unable to reach an agreement. Cresford asked an advisor, Joe Bolla (**Bolla**), to mediate the issue. The parties provided Bolla with information about Giannakopoulos’s outstanding entitlements.

19. On July 23, 2020, Bolla sent a without prejudice settlement proposal, for discussion purposes (included as **Attachment 2**). He described the proposal as his determination of “what was fair” in the circumstances, as a “friend of Cresford.” The proposal acknowledged the extraordinary efforts made by Giannakopoulos and other employees during this period. Bolla included as a schedule his proposal for how a portion of Giannakopoulos’s employment entitlements should be paid.

20. Bolla’s settlement proposal acknowledged the outstanding 2017 and 2019 bonuses owed to Giannakopoulos. The proposal also acknowledged Giannakopoulos’s claims for his 2020 bonus, but did not propose to pay these amounts due to financial difficulties.

21. Giannakopoulos and Cresford exchanged without prejudice communications to resolve Giannakopoulos’s claims, including his additional claims for his 2020 bonus.

22. On September 8, 2020, Cresford and Giannakopoulos reached a full and final settlement of Giannakopoulos’s claims (included as **Attachment 3**). Cresford agreed to pay \$262,500 to Giannakopoulos, which would be paid from the closings of the YSL project, the Clover project, and the conveyance of 69 Hayden Street pursuant to an irrevocable direction provided to Cresford’s counsel.

23. The settlement agreement was signed by Daniel Casey on behalf of “[the] Cresford Entities including Limited Partnerships”, which included YSL. The settlement agreement specifically carved-out Giannakopoulos’s claims for his 2020 bonus and for unpaid vacation, which were to be addressed in further negotiations after the settlement.

24. Giannakopoulos appears never to have signed the agreement but had previously communicated his acceptance of its substantive terms by email (included as **Attachment 4**). The parties acted in accordance with the agreement.

25. On September 14, 2020, pursuant to the settlement agreement, Daniel Casey signed an amended irrevocable direction to YSL's counsel to pay Giannakopoulos the agreed amounts from the proceeds of sale of YSL or any other similar sale (included as **Attachment 5**).

26. As part of the settlement agreement, Cresford gave notice to Giannakopoulos that he would be terminated effective February 1, 2021. Giannakopoulos continued to work in his role with Cresford during the intervening period. Among other responsibilities, he provided extensive information to Concord on behalf of YSL during Concord's due diligence process. He was also heavily involved in the sale of the remaining assets of Cresford's Casa 3 project.

27. On January 18, 2021, Giannakopoulos sent an email advising Cresford that he would cease working on January 31, 2021 and claiming payment of the outstanding \$262,500 in bonuses under the settlement agreement, the unpaid 2020 bonuses and 17 days of unused vacation (included as **Attachment 6**).

28. Giannakopoulos had previously confirmed that he was owed outstanding vacation time in an email to Cresford on December 21, 2020 (included as **Attachment 7**). Cresford never paid compensation for these 17 unused vacation days, whose value of \$19,615 remains outstanding.

D. FAILURE TO PERFORM THE SETTLEMENT AGREEMENT

29. Under the settlement agreement, YSL and Cresford were required to pay the settlement payments by October 15, 2020. However, YSL and Cresford failed to pay Giannakopoulos's outstanding 2017 and 2019 bonuses totaling \$262,500.

30. Giannakopoulos sent a series of emails waiving Cresford's delay and extending the deadline for payment, which are included as **Attachment 8**. Despite these extensions, Cresford has failed to pay the \$262,500 in bonuses due under the settlement agreement.

E. BREACH OF CONTRACT

31. Under his Employment Agreement, Giannakopoulos was entitled to the outstanding bonuses that had accrued since 2017 but which remained unpaid. YSL and the other Cresford Employers were contractually required to pay these bonuses, but failed to do so. There is no dispute that the 2017 and 2019 bonuses were payable and owing, as was acknowledged in the settlement agreement.

32. YSL and the other Cresford Employers have also failed to pay Giannakopoulos's 2020 bonus of \$75,000, equal to 25% of Giannakopoulos's base salary of \$300,000.

33. YSL and the other Cresford Employer failed to pay compensation for Giannakopoulos' 17 unused vacation days, whose value of \$19,615 remains outstanding.

34. Finally, YSL and the other Cresford Employers failed to pay the \$175,000 retention bonus that Casey had promised to Giannakopoulos in January 2020, despite Giannakopoulos's extraordinary service to Cresford.

35. Giannakopoulos accordingly submits this claim for these outstanding amounts.

Attachment 1



Louie Giannakopoulos

January 28, 2014

RE: Employment Agreement

Dear Louie,

It is with pleasure that Cresford Developments would like to extend a full-time offer of employment to you with the Construction Department based on the following:

- Title: Senior Project Manager, Hi-Rise Construction
- Start Date: Tuesday, February 18, 2014 or an alternative date mutually agreed upon by both parties.
- Reporting to: Vice President, Hi-Rise Construction
- Salary: \$170,000.00 CAD per annum, less statutory deductions, paid semi-monthly via direct deposit.
- Bonus: You will be eligible to receive an annual bonus payment of up to 25% of your base salary. 50% of which is guaranteed and the remaining 50% will be discretionary based on overall performance.
- Benefits: You will be eligible to participate in the company benefits program immediately upon starting employment.
- Car Allowance: A monthly vehicle allowance of \$800.00 will be paid to cover costs associated with operating a personal vehicle for company use.
- Additional Expenses: Additional normal and reasonable approved business expenses will be reimbursed on a monthly basis as per company policy. A company laptop and cell phone will be provided to assist in the completion of your outlined duties and responsibilities.
- Vacation: Four (4) weeks of vacation will be provided per year.
- Duties: As outlined in Schedule 'A' attached. Note that duties are regularly reviewed to ensure on-going alignment with the organization's priorities. Key responsibilities and performance targets will be reviewed at a minimum annually and more frequently as required.
- Probationary Period: The first three (3) months of your employment is deemed to be probationary. It is understood and agreed that the Employer will be the sole judge of the Employee's suitability. Therefore during this period, the Employer may terminate the employment without cause or any form of termination payment as per the Ontario Employment Standards Act, 2000.

Please review the terms of this offer carefully and obtain any advice you require. If you agree to the arrangement described herein, please sign this letter and return it by **Wednesday, January 29, 2014** to indicate your acceptance.



Louie, we are truly excited with your interest in joining the Cresford Developments team and we are confident you will find your role here rewarding.

Sincerely,

Enrico Leva
Cresford Developments

ACKNOWLEDGEMENT:

Louie
I, Giannakopoulos (insert name) agree to the terms and conditions of employment outlined herein.

Louie Giannakopoulos
Signature

Jan. 28th, 2014
Date

SCHEDULE 'A'

REPORTS TO:		Enrico Leva, Vice President, Hi Rise Construction
DATE:		January 2014
KEY RESPONSIBILITIES		
End to end project management from pre construction to close out documents, due diligence, planning , project cost estimating, construction budgets, support as required for banks and financial approvals, manage the construction and site management		

Attachment 2

From Brother iPrint&Scan

From: Joe Bolla <joebolla@gmail.com>

Thu, Jul 23, 2020 at 2:20 PM EDT (GMT-04:00)

To: Louie Giannakopoulos <lgiannakopoulos@cresbuild.com>

Here is the document. I hope you can read it. I am available to answer questions or discuss my suggestion tomorrow.

Regards, Joe

From Brother iPrint&Scan

Attachments

- 27939.jpg
- 35247.jpg
- 40578.jpg
- 46302.jpg

CONFIDENTIAL

Settlement Proposal (Without Prejudice)

My Role: Facilitate the settlement of certain employees' compensation. I offer this proposal as a friend of Cresford. It is intended to be for "discussion purposes" only.

Objective: Determine "what is fair" based on consideration of the circumstances and the facts, using my judgement and experience.

Circumstances:

- a) **Environment:** Covid-19 has impacted the viability of many small businesses. Millions of employees have been temporarily laid off and are receiving government subsidies. Many employees have been and will be terminated. Some companies are and will go out of business. These are very uncertain times. Unemployment has increased significantly.
- b) **Current Cresford Situation:** The banks stopped funding Cresford's projects in January, 2020. Since then, Cresford has received no corporate cash inflows to pay for its operations. In March 2020, three of Cresford's four projects were placed into receivership because they were not economically viable. Cresford obtained a loan secured by other assets (including 59 Hayden, 69 Hayden, CASA III townhomes, 357 ½ Yonge and 357A Yonge St) to provide some cash. The amount of debt secured by the other assets is \$56.5 million. In addition, the amount of debt secured by YSL is \$209 million. The monthly debt service of the total debt of \$265.5 million is \$1.1 million. The shareholder has personally contributed cash to fund this monthly interest, subsidize payroll and pay operating costs (including certain accounts payable). Neither Cresford nor the shareholder has cash.
- c) **Future Cresford Situation:** Cresford expects to receive some cash from the sale of other assets after repayment of the secured debt, from Clover after the project is registered and closed in a year and from the sale of YSL on closing and after the project is registered and closed in 5 years. Both Halo and 33 Yorkville are in the process of sale by the receiver. It is unknown whether Cresford will receive any cash from the sale proceeds of these projects.
- d) **Sale of YSL:** On July 17, 2020 an APS was executed for the sale of YSL. Due diligence began on July 21, 2020. The purchaser has 10 business days to complete its due diligence. During the due diligence period, the purchaser will decide whether it wants to hire some of Cresford's employees. Cresford will actively promote the hiring of its employees by the purchaser.

Purchase of Condominiums:

Certain employees arranged for their bonuses to be paid by credits towards the purchase of condominiums instead of cash. The projects in which the employees purchased the condominium units are now in receivership because they are not economically viable. This situation has created a complicated compensation issue. The employees converted their bonuses into investments which are subject to loss.

Two questions arise from bonuses being paid by credits towards the purchase of condominiums:

- 1) Has the bonus been paid? In my opinion, the bonus is not paid until the purchase of the condominium closes. So, the obligation to pay the bonus remains outstanding.
- 2) What is the status of the current fair market appreciation of the condominium? In my opinion, the fair market appreciation can only be determined when the condominium unit closes. Any apparent appreciation now is not relevant because the project is not economically viable and it is under construction. So, the purchase price of the condominiums must be increased in order for the project to be completed. After the condominium units close, the true fair market appreciation or loss can be determined. In any case, the employee converted payment of the bonus into an investment which is subject to loss.

Employee compensation does not include any loss in fair market appreciation.

Finally, bonuses are taxable transactions whether they are paid by credits to the purchase of condominium units or by cash.

Facts:

- a) The employees have made a major contribution to the development activities of Cresford. They demonstrated a results driven approach which made a difference to the outcome of many projects. In addition, during Cresford's struggle to survive and sell assets, the employees performed admirably in working with banks, receivers, construction managers, trades, suppliers and prospective purchasers. They are very good at what they do and their efforts are appreciated.
- b) Cresford is insolvent.
- c) Cresford's projects are not economically viable because of two factors:
 - i) Too many condominium units, more than the financing presale requirement, were sold at introductory prices. While selling prices increased significantly, there were not enough unsold units to absorb cost increases.
 - ii) Construction costs increased significantly primarily in response to US tariffs. The cost overruns were in excess of \$150 million.
- d) Employees are frustrated by Cresford's lack of communication. Cresford is "shell shocked" by the disintegration of its business.
- e) Payment for employee compensation must be funded by future cash proceeds from the sale of assets.

- f) Severance payments are intended to bridge employee compensation from termination of employment at Cresford to securing employment at a new company. The severance payments are "clawed back" by compensation received from the new employer during the severance period.
- g) The employees received a \$10,000 Christmas bonus in December 2019. They also received a \$65,000 bonus in early 2020. This bonus was a partial payment of an amount to be paid to the employees if Cresford remained a going concern in a year's time (i.e. at the end of 2020). In March 2020, when the projects were placed into receivership, Cresford was no longer a going concern. So, one quarter of the retention bonus was owed and paid.
- h) The employees have continued to receive their full salary to date. Other employees were temporarily laid off and some were terminated during this period. Their salaries were subsidized by contributions of cash by the shareholder in recognition of their work and importance to the organization.
- i) The employees are now represented by a lawyer. Two employees have served notice on Cresford claiming that they were constructively dismissed. This is a complicated legal issue.

Principles of Settlement:

- 1) Cresford is insolvent. Therefore, payment of the bonuses must be funded by future asset sales.
- 2) The impact of Covid-19 has been devastating for companies and employees. Many employees are unemployed and companies are struggling to survive. For those employees who have remained employed by companies still in business, many had to agree to reductions in their compensation because of the employers' ability to pay.
- 3) The employees' commitment to Cresford and their excellent performance deserve recognition.
- 4) Cresford must assist employees in securing new employment.
- 5) Given Cresford's limited access to cash, salary payments commencing August 1, 2020 should reduce the severance period. The impact of the shortened severance period to the employee should be minimal because it is expected that they will all have employment in a few months.

Conclusion:

Refer to Schedule A for my suggestion to resolve the outstanding compensation issues. I expect both the company and the employees will disagree with parts of my proposal. Hopefully, it will reopen the channel of communication and generate productive discussion.

Both Cresford and the employees have sacrificed much and there are limits to what can be done to resolve the issues. Compromise is necessary.

Schedule A: Louie Giannakopoulos:

Payment of Outstanding Bonuses:

- 1) 2017 bonus of \$200,000—this bonus was paid by a credit to the purchase price of a 33 Yorkville unit. The purchaser of the 33 Yorkville project will disclaim all 33 Yorkville condo purchase agreements. This bonus will be paid in 2 parts: \$100,000 from the closing of YSL by September 30, 2020 and \$100,000 from the proceeds of completion and closing of the Clover project, expected to occur in August 2021.
- 2) 2019 bonus of \$62,500—this bonus will be paid from the proceeds of the conveyance of 69 Hayden which is expected to occur in September, 2020.
- 3) \$175,000 retention bonus and 2020 bonus of 25% of base salary—approximately \$75,000 (Christmas bonus of \$10,000 and \$65,000 for maintaining Cresford as a going concern) has been paid. Cresford ceased to be a going concern in March, 2020. So, 25% of the gross retention bonus has been earned and paid. The base salary has been paid in 2020 because the shareholder personally contributed cash to fund your salary. Given the general economic environment and the insolvency of Cresford, no bonuses on the 2020 base salary can be paid.
- 4) Severance payments: Cresford to pay severance for 6 months commencing August 1, 2020, subject to clawback.

Additional source of income:

- 1) Potential consulting contract or employment with purchaser of YSL.
- 2) Short term consulting contract with Cresford to oversee completion of CASA.

Attachment 3

Settlement – Louie Giannakopoulos

This is in full and final settlement of all salary, benefits and bonuses or other claims by Louie Giannakopoulos against any of the Cresford Entities including Limited Partnerships and Dan Casey, with the exception of the items indicated in paragraph 6 below.

IN CONSIDERATION for this final settlement, Louie Giannakopoulos shall receive \$ 262,500 plus continuance of his salary for six months commencing on August 1, 2020 including benefits. Should Louie Giannakopoulos obtain other employment or fees for consultation subsequent to August 1, 2020, the income received will reduce the monthly severance payments from the Cresford Entities (see footnote 1)

1. The \$ 262,500 shall be paid as follows:
 - a) \$162,500.00 to be paid from the proceeds on the earlier of (a) the closing of the YSL Project or (b) the closing of 69 Hayden Street conveyance to the City of Toronto, which are both expected to occur by September 30, 2020.
 - b) \$100,000.00 to be paid from the proceeds of the closing of the Clover Project which is expected to occur in August 2021.
2. Cresford shall sign irrevocable directions to its lawyers to pay the above noted amounts in points 1(a) and 1(b) from the said proceeds, in the forms attached as Schedule "A". The undersigned shall provide Louie Giannakopoulos with proof that the direction has been signed and delivered to council and confirmation of receipt by council. In the event that the undersigned changes council Louie Giannakopoulos shall be notified by the undersigned and the undersigned will provide a replacement irrevocable authorization and direction to the replacement council.
3. Cresford shall obtain all approvals from the Court and its officers (including monitors and receivers) in any insolvency proceedings involving Cresford entities that are necessary to give effect to commitments in paragraphs 1(b).
4. In the event that payment in paragraph 1(a) is not paid in full by October 15, 2020 and the delay has not been waived in writing by Louie Giannakopoulos, this agreement shall be null and void.
5. This agreement constitutes notice of termination of Louie Giannakopoulos' employment effective February 1, 2021 in which he shall receive continuance of his salary and benefits for six months commencing August 1, 2020.
6. Cresford agrees to continue discussions in resolving the outstanding items of: (a) pay in lieu of unused vacation, (b) severance commencement date and (c) 2020 accrued bonuses. These items are to be addressed after the execution of this settlement.

Dated at Toronto, this 8th day of September, 2020.



Dan Casey on behalf of Cresford Entities
and Limited Partnerships

Louie Giannakopoulos

¹ Including: Cresford Real Estate Corporation, Cresford (Rosedale) Developments Inc., East Downtown Redevelopment Partnership, 33 Yorkville Residences Inc., 33 Yorkville Residences Limited Partnership, 480 Yonge Street Inc., 480 Yonge Street Limited Partnership, The Clover on Yonge Inc., The Clover on Yonge Limited Partnership, YSL Residences Inc., YG Limited Partnership, 9615334 Canada Inc., 50 Charles Street Limited, 69 Hayden Street Limited, 11 Gloucester Street Inc., and Cresford Holdings Ltd. (collectively, "Cresford")

IRREVOCABLE AUTHORIZATION AND DIRECTION

To: Dale & Lessmann LLP

Re: Sale of Clover Project to Concord Adex

You are hereby irrevocably authorized, instructed and directed to pay out of funds received from Concord Adex in connection with the sale of the Clover project in the sum of \$100,000 to Louie Giannakopoulos (cell: (416) 786-1906, email: louiegiannakopoulos@yahoo.com) and this shall be your good and sufficient authority for so doing.

This direction shall not be revoked without the consent of the beneficiary of this Direction, Louie Giannakopoulos. A fax, photocopy or scanned copy delivered by such other electronic means of this signed Direction shall be effective as an original.

In the event that the undersigned changes council Louie Giannakopoulos shall be notified by the undersigned and the undersigned will provide a replacement irrevocable authorization and direction to the replacement council. The undersigned shall provide proof that the direction has been executed and delivered to Dale & Lessmann LLP and confirmation of receipt by Dale & Lessmann LLP.

Dated at Toronto, Ontario this 8th day of September, 2020.

Cresford (Rosedale) Developments Inc. NTD: Dale & Lessmann LLP to confirm that this is the registered and beneficial owner. If it is not, then Dale & Lessman LLP to insert the proper company.


Dan Casey
President

Acknowledged by Dale & Lessmann LLP

Per: _____

IRREVOCABLE AUTHORIZATION AND DIRECTION

To: Nelligan O'Brien Payne LLP

Re: Sale of YSL Project to Empire (Waterwave) Ltd.

You are hereby irrevocably authorized, instructed and directed to pay out of funds received from Empire (Water Wave) Inc., or any successor or assign on the sale of the above noted Project the sum of \$162,500 to Louie Giannakopoulos (cell: (416) 786-1906, email: louiegiannakopoulos@yahoo.com) and this shall be your good and sufficient authority for so doing.

This direction shall not be revoked without the consent of the beneficiary of this Direction, Louie Giannakopoulos. A fax, photocopy or scanned copy delivered by such other electronic means of this signed Direction shall be effective as an original.

In the event that the undersigned changes council Louie Giannakopoulos shall be notified by the undersigned and the undersigned will provide a replacement irrevocable authorization and direction to the replacement council. The undersigned shall provide proof that the direction has been executed and delivered to Nelligan O'Brien Payne LLP and confirmation of receipt by Nelligan O'Brien Payne LLP.

Dated at Toronto, Ontario this  day of September, 2020.

Cresford (Rosedale) Developments Inc. NTD: Nelligan O'Brien Payne LLP to confirm that this is the registered and beneficial owner. If it is not, then Nelligan O'Brien Payne LLP to insert the proper company.



Per: Dan Casey
President

Acknowledged by Nelligan O'Brien Payne LLP

Per:

Attachment 4

Fw: Revised Agreements

From: Louie Giannakopoulos <lgiannakopoulos@cresbuild.com>
Sent: August 21, 2020 10:37 AM
To: Dave Mann <dmann@cresford.com>
Cc: Dan Casey <dcasey@cresford.com>; Marco Mancuso <marco@cresbuild.com>
Subject: RE: Revised Agreements

Morning Dave,

Without prejudice and as per our discussions with Dan, on behalf off Marco and I we agreed to proceed with the recent settlements issued to us. Again we are very appreciatively of what has been issued to date. We agree that we will leave the remaining couple of items to be discussed afterwards with Joe. As stated to Dan we want to continue maintaining our focus on the closing of YSL, Park Conveyance, Casa 3 Completion etc. Please proceed with the legal documents and directions through Nillegan.

Sincerely

Louie Giannakopoulos

Vice President, Construction

Cresbuild

59 Hayden Street, Suite 200 | Toronto, ON | M4Y 0E7

T: 416.971.7557 ext. 256 | C: 416.786.1906 | E: lgiannakopoulos@cresbuild.com

www.cresford.com/cresbuild

Marco Mancuso PMP, GSC, LEED AP

Director, Construction

Cresbuild

59 Hayden Street, Suite 200 | Toronto, ON | M4Y 0E7

T: 416.971.7557 ext. 281 | C: 416.452.0387 | E: marco@cresbuild.com

www.cresford.com/cresbuild

From: Dave Mann <dmann@cresford.com>

Sent: August 20, 2020 12:08 PM

To: Louie Giannakopoulos <lgiannakopoulos@cresbuild.com>; Marco Mancuso <marco@cresbuild.com>

Cc: Dan Casey <dcasey@cresford.com>; 'Joe Bolla' <joebolla@gmail.com>

Subject: RE: Revised Agreements

WITHOUT PREJUDICE and CONFIDENTIAL

Hi Louie and Marco,

I just wanted to elaborate on Joe's email to you from yesterday. All projects were put on hold by the Banks in January meaning that all financing stopped. A key component of the financing draws are fees that are paid to Cresford Rosedale which are used to pay salaries and bonuses, along with other overhead costs. Monthly fee revenue was about \$1,000,000; it is now zero. Our payroll costs have declined significantly and a portion of salaries have been reimbursed by PWC which helps a little. Three projects have gone into receivership and YSL had its funding cut, forcing us to put it on the market.

To enable us to make payroll and keep Cresford alive, we have had to borrow money at high interest rates. We are being forced to sell all our Hayden Street assets.

We appreciate your continuing on with us in these difficult times. Joe has worked hard in coming up with the settlement proposals and I thought that there was agreement on those. Joe did mention that there were discussions with the two of you on severance start dates, vacation pay and 2020 bonuses but there was no agreement. As I mentioned to you, Joe is taking a break from Cresford to deal with his personal issues. We expect to be able to talk to him about this in a week or two and at that time, we can negotiate the three items. The settlements provide for a significant amount of income for both of you. Dan and I are also promoting your services with Empire.

You are also expecting Directions to be prepared to give you security on the payments. Those directions are being done by Nelligan and I hope to have them today or tomorrow.

Dan has instructed me to communicate this with you and go with the agreements as recommended by Joe. Let's get these signed up and then we can deal with the open items before the end of August.

Thanks

From: Louie Giannakopoulos

Sent: August 19, 2020 2:36 PM

To: Dave Mann <dmann@cresford.com>

Cc: Dan Casey <dcasey@cresford.com>; Marco Mancuso <marco@cresbuild.com>

Subject: RE: Revised Agreements

Dave,

Marco and I reached out to Dan to discuss our agreement and concerns. We agreed on the following items to be added to our Agreements. Dan will reach out to you to further discuss:

1. Severance Period: To commence after the YSL closing commencing on October 1, 2020 based on a period of:
 - a. Louie: 6 months
 - b. Marco: 5 months
2. Unused Vacation: Paid as a lump sum amount on October 1st, 2020
 - a. Louie: 20 days from 2020 = Total 20 days
 - b. Marco: 6 days carried over from 2019 + 20 days from 2020 = Total 26 days
3. Remaining Bonuses:
 - a. \$ 175,000 Tumultuous Times: Agreed to remove
 - b. 2020 Bonus, 25% of Base Salary:
 - i. Agreed to add based on the working period of January 1st, 2020 to September 30th, 2020 (9 months)
 - ii. To be paid on the closing of YSL
 1. Louie: \$ 56,250
 2. Marco: \$ 46,875
3. Securing Payments: How do you guarantee/secure payments based on closings of YSL and especially Clover

Louie Giannakopoulos

Vice President, Construction

Cresbuild

59 Hayden Street, Suite 200 | Toronto, ON | M4Y 0E7

T: 416.971.7557 ext. 256 | C: 416.786.1906 | E: lgiannakopoulos@cresbuild.com

www.cresford.com/cresbuild

From: Marco Mancuso <marco@cresbuild.com>

Sent: August 19, 2020 12:49 PM

To: Dave Mann <dmann@cresford.com>; Louie Giannakopoulos <lgiannakopoulos@cresbuild.com>

Cc: Joe Bolla <joebolla@gmail.com>; Dan Casey <dcasey@cresford.com>

Subject: RE: Agreement

Dave,

Below are the items that were discussed with Joe. Joe also spoke with Dan and Dan called us to confirm that he also agrees.

1. For Louie and Marco Severance period to commence after the YSL closing. To make it Easy, **Severance period to commence October 1, 2020.**
2. Marco and Louie to be paid for unused vacation time (please confirm when these unused vacation days will be paid).
 - a. **Marco** – 6 days carried over from 2019 + 20 days from 2020 = **total 26 days**
 - b. **Louie** – 20 days from 2020 = **total 20 days**
3. We agreed with Joe that our 2020 25% of base salary bonus and the \$175,000 “tough times” bonus would be added as a line item on the memo to be negotiated at a later date. We wanted to help speed up the process of getting something in writing and then negotiate/discuss the 2020 bonuses after the primary agreement was signed

4. We would need to confirm prior to signing anything that the method above constitutes a secured way of payment.
How is the YSL future payment and the Clover future payment guaranteed?

Please confirm with Joe if required as this was exactly what was discussed.

Thanks,

Marco Mancuso PMP, GSC, LEED AP

Director, Construction

Cresbuild

59 Hayden Street, Suite 200 | Toronto, ON | M4Y 0E7

T: 416.971.7557 ext. 281 | C: 416.452.0387 | E: marco@cresbuild.com

www.cresford.com/cresbuild

From: Dave Mann <dmann@cresford.com>

Sent: August 19, 2020 11:20 AM

To: Marco Mancuso <marco@cresbuild.com>; Louie Giannakopoulos <lgiannakopoulos@cresbuild.com>

Subject: RE: Agreement

Hi guys,

We heard from Joe today and as you may know, he is tending to his wife. She had some major injuries from her car accident and has had a bit of a relapse. Joe is off the grid for a bit as he is looking after her.

Can you summarize the differences?

Thx

From: Marco Mancuso

Sent: August 19, 2020 11:08 AM

To: Dave Mann <dmann@cresford.com>

Cc: Dan Casey <dcasey@cresford.com>; Joe Bolla <joebolla@gmail.com>

Subject: Re: Agreement

Hi Dave can you please speak with Joe. It's almost there but it is not exactly what was discussed with Joe.

I'll give you a call later with Louie if required

Thanks

Marco Mancuso

Cresford Developments

416-452-0387

On Aug 19, 2020, at 10:49 AM, Dave Mann <dmann@cresford.com> wrote:

Hi Marco,

Attached is the agreement drafted by Nelligan as agreed between you and Joe. We will send the Directions when completed by the lawyers.

Thanks

From: Cathy Alderson [<mailto:Cathy.Alderson@nelliganlaw.ca>]

Sent: August 18, 2020 10:59 AM

To: Dave Mann <dmann@cresford.com>

Subject:

<Settlement - Marco Mancuso.docx>

This communication is intended only for the party to whom it is addressed, and may contain information which is privileged or confidential. Any other delivery, distribution, copying or disclosure is strictly prohibited and is not a waiver of privilege or confidentiality. If you have received this telecommunication in error, please notify the sender immediately by return electronic mail and destroy the message.

Attachment 5

IRREVOCABLE AUTHORIZATION AND DIRECTION

To: Nelligan O'Brien Payne LLP

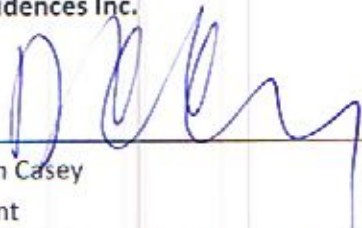
Re: Sale of YSL Project to Empire (Waterwave) Ltd.

You are hereby irrevocably authorized, instructed and directed to pay out of funds received from Empire (Water Wave) Inc. on the sale of the above noted Project the sum of \$162,500 to Louie Giannakopoulos and this shall be your good and sufficient authority for so doing. Such payment shall be reduced on account of any monies paid to Louie Giannakopoulos by or at the direction of Cresford (Rosedale) Developments Inc. pursuant to similar directions on transactions that may close at an earlier date.

This direction shall not be revoked without the consent of the beneficiary of this Direction, Louie Giannakopoulos. A fax, photocopy or scanned copy delivered by such other electronic means of this signed Direction shall be effective as an original.

Dated at Toronto, Ontario this 14 day of September, 2020.

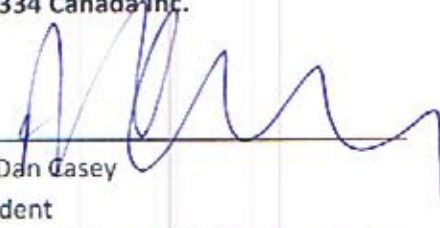
YSL Residences Inc.



Per: Dan Casey
President

I have authority to bind the corporation

**YG Limited Partnership by its General Partner
9615334 Canada Inc.**



Per: Dan Casey
President

I have authority to bind the corporation

Acknowledged by Nelligan O'Brien Payne LLP



Per: Debbie Bellinger

IRREVOCABLE AUTHORIZATION AND DIRECTION

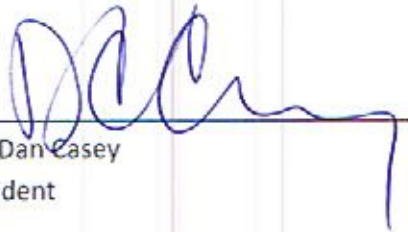
To: Dale & Lessmann LLP
AND
Any other counsel acting for any Cresford entity on the sale of the Clover Project

Re: Sale of Clover Project

You are hereby irrevocably authorized, instructed and directed to pay funds to Louie Giannakopoulos in accordance with the enclosed irrevocable direction, regardless of whether:

1. A Cresford entity other than the one indicated is the recipient, payee or beneficial owner of funds payable as a result of the sale of the Clover project; or
2. A firm other than Dale & Lessman LLP acts for a Cresford entity in respect of the sale of the Clover project for any reason.

Dated at Toronto, Ontario this 1st day of September, 2020.


Per: Dan Casey
President

IRREVOCABLE AUTHORIZATION AND DIRECTION


To: Nelligan O'Brien Payne LLP
AND
Any other counsel acting for any Cresford entity on the sale of the YSL Project

Re: Sale of YSL Project to Empire (Waterwave) Ltd.

You are hereby irrevocably authorized, instructed and directed to pay funds to Louie Giannakopoulos in accordance with the enclosed irrevocable direction, regardless of whether:

1. A Cresford entity other than the one indicated is the recipient, payee or beneficial owner of funds payable as a result of the sale of the YSL project; or
2. A firm other than Nelligan O'Brien Payne LLP acts for a Cresford entity in respect of the sale of the YSL project for any reason.

Dated at Toronto, Ontario this 14 day of September, 2020.



Per: Dan Casey
President

Attachment 6

Departure from Cresford and Outstanding Amounts Owning

From: Louie Giannakopoulos <lgiannakopoulos@cresbuild.com> Mon, Jan 18, 2021 at 7:39 AM EST (GMT-05:00)
To: Dan Casey <dcasey@cresford.com>
Cc: Dave Mann <dmann@cresford.com>

Morning Dan,

I am writing to advise you that I have secured other employment. I am issuing you notice that my last day with Cresford shall be January 31, 2021. I am ok with Cresford ceasing my salary and benefits effective February 1, 2021 provided that it pays all other amounts owing to me.

These include:

1. Accrued salary up to and including January 31, 2021
2. 17 days of unused and accrued vacation days up to and including January 31, 2021 (15 unused from 2020 and 2 accrued from 2021 for a total of 17 days)
3. The \$262,500 payable to me under my settlement agreement with the Cresford Entities including Limited Partnerships and Dan Casey.
4. My accrued 2020 and 2021 bonuses up to and including January 31, 2021 based on 25% of my base salary
5. Continuation of benefits through January 31, 2021

Please confirm the above.

Sincerely,

Louie Giannakopoulos

Vice President, Construction

Cresbuild

59 Hayden Street, Suite 200 | Toronto, ON | M4Y 0E7

T: 416.971.7557 ext. 256 | C: 416.786.1906 | E:lgiannakopoulos@cresbuild.com

www.cresford.com/cresbuild

Attachment 7

Remaining Vacation

From: Louie Giannakopoulos <lgiannakopoulos@cresbuild.com> Mon, Dec 21, 2020 at 12:25 PM EST (GMT-05:00)
To: Dave Mann <dmann@cresford.com>

Dave,

Please see my last email regarding vacation request. I actually have 15 remaining days and not 20. Please speak to him to have this paid by end of this year (**next pay period**) since I have not used my remaining time. Every past employee has been reimbursed their vacation days and I know that you are speaking to Marco also.

Louie Giannakopoulos

Vice President, Construction

Cresbuild

59 Hayden Street, Suite 200 | Toronto, ON | M4Y 0E7

T: 416.971.7557 ext. 256 | C: 416.786.1906 | E: lgiannakopoulos@cresbuild.com

www.cresford.com/cresbuild

From: Louie Giannakopoulos

Sent: March 11, 2020 7:46 AM

To: Dan Casey <dcasey@cresford.com>

Cc: Robin Simpson <rsimpson@cresford.com>; Rosemary Nocella <rnocella@cresford.com>; Kyla Copat <kcopat@cresford.com>

Subject: Vacation Alert

Morning Dan,

Please be advised that I am requesting the following two days off. All necessary staffing will be present during this period.

Louie Giannakopoulos

Vice President, Construction

Cresbuild

59 Hayden Street, Suite 200 | Toronto, ON | M4Y 0E7

T: 416.971.7557 ext. 256 | C: 416.786.1906 | E: lgiannakopoulos@cresbuild.com

www.cresford.com/cresbuild

Attachments

- Mar.11th, 2020.xls

Attachment 8

----- Forwarded Message -----

From: Louie Giannakopoulos <louiegiannakopoulos@yahoo.com>
To: Dan Casey <dcasey@cresford.com>
Cc: Dave Mann <dmann@cresford.com>
Sent: Sunday, May 23, 2021, 10:07:47 p.m. EDT
Subject: Re: Settlement Agreement Extension #7 - Louie Giannakopoulos

Dan,

With respect to my settlement agreement, Cresford is in breach of paragraph 1(a) because it has said it cannot or will not direct funds to me from the closing of 69 Hayden Street. I don't waive that breach but it will be moot assuming I am paid from the closing of the YSL project so I will forbear for the moment on taking any steps to address the breach in the expectation that will occur. Please provide any updated irrevocable directions necessary given that the project is no longer being sold to Empire as it was when the original directions were signed.

The first payment of \$ 162,500 under paragraph 1(a) of my agreement was due by October 15, 2020 pursuant to paragraph 4 of the agreement. I previously extended that deadline to November 15, 2020. I then extended the date to December 15, 2020, January 15, 2021, February 15, 2021, March 15, 2021, April 19, 2021 and once again May 26, 2021. Please take this email as notice under that I further extend the deadline to June 30, 2021.

Louie Giannakopoulos
(416) 786-1906

On Wednesday, April 14, 2021, 11:16:48 a.m. EDT, Louie Giannakopoulos <louiegiannakopoulos@yahoo.com> wrote:

Dan,

With respect to my settlement agreement, Cresford is in breach of paragraph 1(a) because it has said it cannot or will not direct funds to me from the closing of 69 Hayden Street. I don't waive that breach but it will be moot assuming I am paid from the closing of the YSL project so I will forbear for the moment on taking any steps to address the breach in the expectation that will occur. Please provide any updated irrevocable directions necessary given that the project is no longer being sold to Empire as it was when the original directions were signed.

The first payment of \$ 162,500 under paragraph 1(a) of my agreement was due by October 15, 2020 pursuant to paragraph 4 of the agreement. I previously extended that deadline to November 15, 2020. I then extended the date to December 15, 2020, January 15, 2021, February 15, 2021, March 15, 2021 and once again April 19, 2021. Please take this email as notice under that I further extend the deadline to May 26, 2021.

Louie Giannakopoulos

(416) 786-1906

On Monday, March 15, 2021, 05:20:43 p.m. EDT, Louie Giannakopoulos <louiegiannakopoulos@yahoo.com> wrote:

Dan,

With respect to my settlement agreement, Cresford is in breach of paragraph 1(a) because it has said it cannot or will not direct funds to me from the closing of 69 Hayden Street. I don't waive that breach but it will be moot assuming I am paid from the closing of the YSL project so I will forbear for the moment on taking any steps to address the breach in the expectation that will occur. Please provide any updated irrevocable directions necessary given that the project is no longer being sold to Empire as it was when the original directions were signed.

The first payment of \$ 162,500 under paragraph 1(a) of my agreement was due by October 15, 2020 pursuant to paragraph 4 of the agreement. I previously extended that deadline to November 15, 2020. I then extended the date to December 15, 2020, January 15, 2021, February 15, 2021 and once again March 15, 2021. Please take this email as notice under that I further extend the deadline to April 19, 2021.

Louie Giannakopoulos
(416) 786-1906

On Monday, February 15, 2021, 09:01:56 a.m. EST, Louie Giannakopoulos <louiegiannakopoulos@yahoo.com> wrote:

Dan,

With respect to my settlement agreement, Cresford is in breach of paragraph 1(a) because it has said it cannot or will not direct funds to me from the closing of 69 Hayden Street. I don't waive that breach but it will be moot assuming I am paid from the closing of the YSL project so I will forbear for the moment on taking any steps to address the breach in the expectation that will occur. Please provide any updated irrevocable directions necessary given that the project is no longer being sold to Empire as it was when the original directions were signed.

The first payment of \$ 162,500 under paragraph 1(a) of my agreement was due by October 15, 2020 pursuant to paragraph 4 of the agreement. I previously extended that deadline to November 15, 2020. I then extended the date to December 15, 2020, January 15, 2021 and once again February 15, 2021. Please take this email as notice under that I further extend the deadline to March 15, 2021.

Louie Giannakopoulos
(416) 786-1906

-----Original Message-----

From: Louie Giannakopoulos
Sent: January 15, 2021 6:31 PM
To: Dan Casey <dcasey@cresford.com>
Cc: Dave Mann <dmann@cresford.com>
Subject: RE: ettlement Agreement Extension - Louie Giannakopoulos

Dan,

With respect to my settlement agreement, Cresford is in breach of paragraph 1(a) because it has said it cannot or will not direct funds to me from the closing of 69 Hayden Street. I don't waive that breach but it will be moot assuming I am paid from the closing of the YSL project so I will forbear for the moment on taking any steps to

address the breach in the expectation that will occur. Please provide any updated irrevocable directions necessary given that the project is no longer being sold to Empire as it was when the original directions were signed.

The first payment of \$ 162,500 under paragraph 1(a) of my agreement was due by October 15, 2020 pursuant to paragraph 4 of the agreement. I previously extended that deadline to November 15, 2020. I then extended the date to December 15, 2020 and once again to January 15, 2021 . Please take this email as notice under that I further extend the deadline to February 15, 2021.

Louie Giannakopoulos
Vice President, Construction
Cresbuild
59 Hayden Street, Suite 200 | Toronto, ON | M4Y 0E7
T: 416.971.7557 ext. 256 | C: 416.786.1906 | E:lgianakopoulos@cresbuild.com www.cresford.com/cresbuild

-----Original Message-----

From: Louie Giannakopoulos
Sent: December 14, 2020 1:53 PM
To: Dan Casey <dcasey@cresford.com>
Cc: Dave Mann <dmann@cresford.com>
Subject: ettlement Agreement Extension - Louie Giannakopoulos

Dan,

With respect to my settlement agreement, Cresford is in breach of paragraph 1(a) because it has said it cannot or will not direct funds to me from the closing of 69 Hayden Street. I don't waive that breach but it will be moot assuming I am paid from the closing of the YSL project so I will forbear for the moment on taking any steps to address the breach in the expectation that will occur. Please provide any updated irrevocable directions necessary given that the project is no longer being sold to Empire as it was when the original directions were signed.

The first payment of \$ 162,500 under paragraph 1(a) of my agreement was due by October 15, 2020 pursuant to paragraph 4 of the agreement. I previously extended that deadline to November 15, 2020. I then extended the date to December 15, 2020. Please take this email as notice under that I further extend the deadline to January 15, 2021.

Louie Giannakopoulos
Vice President, Construction
Cresbuild
59 Hayden Street, Suite 200 | Toronto, ON | M4Y 0E7
T: 416.971.7557 ext. 256 | C: 416.786.1906 | E:lgianakopoulos@cresbuild.com www.cresford.com/cresbuild

-----Original Message-----

From: Louie Giannakopoulos
Sent: November 13, 2020 6:12 PM
To: Dan Casey <dcasey@cresford.com>
Cc: Dave Mann <dmann@cresford.com>
Subject: RE: Settlement Agreement Extension - Louie Giannakopoulos

Dan,

With respect to my settlement agreement, Cresford is in breach of paragraph 1(a) because it has said it cannot or will not direct funds to me from the closing of 69 Hayden Street. I don't waive that breach but it will be moot assuming I am paid from the closing of the YSL project so I will forbear for the moment on taking any steps to address the breach in the expectation that will occur. Please provide any updated irrevocable directions necessary given that the project is no longer being sold to Empire as it was when the original directions were signed.

The first payment of \$ 162,500 under paragraph 1(a) of my agreement was due by October 15, 2020 pursuant to paragraph 4 of the agreement. I previously extended that deadline to November 15, 2020. Please take this email as notice under that I further extend the deadline to December 15, 2020.

Louie Giannakopoulos
Vice President, Construction
Cresbuild
59 Hayden Street, Suite 200 | Toronto, ON | M4Y 0E7
T: 416.971.7557 ext. 256 | C: 416.786.1906 | E:lgiannakopoulos@cresbuild.com www.cresford.com/cresbuild

-----Original Message-----

From: Louie Giannakopoulos
Sent: October 14, 2020 9:45 AM
To: Dan Casey <dcasey@cresford.com>
Cc: Dave Mann <dmann@cresford.com>; Joe Bolla <joebolla@gmail.com>; Marco Mancuso <marco@cresbuild.com>
Subject: RE: Settlement Agreement Extension - Louie Giannakopoulos

Dan,

As per paragraph no. 4 of my signed Settlement Agreement specifically with regards to paragraph 1(a), this email serves as my written notice that if payment is not received by the indicated date then the payment date shall be extended to November 15th, 2020.

Louie Giannakopoulos
Vice President, Construction
Cresbuild
59 Hayden Street, Suite 200 | Toronto, ON | M4Y 0E7
T: 416.971.7557 ext. 256 | C: 416.786.1906 | E:lgiannakopoulos@cresbuild.com www.cresford.com/cresbuild

-----Original Message-----

From: Dave Mann <dmann@cresford.com>
Sent: September 8, 2020 2:20 PM
To: Louie Giannakopoulos <lgiannakopoulos@cresbuild.com>
Subject: FW: Louie

Louie,

Attached are documents signed by Dan. I have sent the directions to the lawyers for acknowledgement.

Dave

-----Original Message-----

From: Dave Mann [mailto:dmann57@hotmail.com]
Sent: September 8, 2020 2:05 PM
To: Dave Mann <dmann@cresford.com>
Subject: Louie

This communication is intended only for the party to whom it is addressed, and may contain information which is privileged or confidential. Any other delivery, distribution, copying or disclosure is strictly prohibited and is not a waiver of privilege or confidentiality. If you have received this telecommunication in error, please notify the sender

immediately by return electronic mail and destroy the message.

TAB B

SCHEDULE “B” – PRIORITY OF CLAIM

As a joint employer, YSL failed to pay Giannakopoulos wages, salaries, commissions or compensation for services rendered during the period beginning on the day that is six months before the date of the initial bankruptcy event. This amount exceeded \$2,000.00. Giannakopoulos accordingly has a priority claim for \$2,000.00 pursuant to sections 81.3 and 136(1)(d) of the BIA.

EXHIBIT "A" – AMENDED PARTICULARS OF CLAIMS

1. THE CLAIMS (together, the **Claims**) as against YG Limited Partnership and YSL Residences Inc. (together, **YSL**) are:

- (a) damages for constructive dismissal: \$30,646.50 ~~\$122,582~~, being contractual pay in lieu of 6 ~~24~~ months' notice, inclusive of HST;
- (b) earned Bonus Commission (as defined below) on the Halo project, inclusive of HST: \$113,000.00;
- (c) earned Bonus Commission on the 33 Yorkville project, inclusive of HST: \$169,500.00;
- (d) earned Bonus Commission on the YSL project, inclusive of HST: \$169,500.00;
- (e) earned Cooperating Commissions (as defined below), inclusive of HST: \$167,322;
~~and~~
- (f) earned Broker Pool Commissions (as defined below), inclusive of HST: \$99,972.00~~;~~

less

- (g) amounts expected to be received in respect of the above claims from the insolvencies of 480 Yonge Street Inc. and 480 Yonge Street Limited Partnership

(Halo), equal to 55% of the \$125,000 unsecured claim approved PricewaterhouseCoopers in its capacity as court-appointed receiver: \$68,750.00.

2. The total value of the Claims is: \$681,190.50 ~~\$841,877~~.

I. OVERVIEW

3. Mike Catsiliras (**Catsiliras**) was employed in common by a number of Cresford companies, including YSL, until his constructive dismissal in late 2019.

4. Catsiliras earned significant bonus commissions for assisting with the launch of the 33 Yorkville, Halo and YSL projects, amounts that were acknowledged in Catsiliras' written employment agreement. As well, Catsiliras earned cooperating commissions and broker pool commissions from marketing Cresford projects.

5. In December 2019, Catsiliras requested payment of the bonuses and commissions that he had earned to date and that were then overdue for payment. Cresford failed to pay the commissions, and refused to provide a date by which it would do so. By so doing, Cresford constructively dismissed him. Catsiliras is accordingly owed damages in lieu of notice as a result of his dismissal.

6. YSL has acknowledged that it owes Catsiliras at least a portion of these amounts. Cresford requested that Catsiliras issue invoices to YSL for \$300,000 in bonus commissions that were owing. YSL's chart of accounts payable acknowledged that it owed Catsiliras \$282,500.

7. PricewaterhouseCoopers (**PwC**) has already approved claims by Catsiliras in insolvency proceedings of related Cresford entities, in which PwC is court-appointed Receiver. Catsiliras will receive some limited recovery of the amounts owed to him via the Halo proceeding. He now submits a claim for the balance.

II. CATSILIRAS' EMPLOYMENT BY CRESFORD

8. YSL is part of a commonly owned group of companies and partnerships (together, **Cresford**) engaged in the development, construction, marketing and sale of condominiums in Toronto, Ontario under the business name Cresford. Cresford conducts its real estate development business through a series of project companies that hold title to and carry out individual development projects.

9. In around 2015, Cresford hired Catsiliras as a sales representative. Catsiliras' primary responsibility was to market and sell units in the Cresford projects. Catsiliras was remunerated through fixed monthly payments, commissions and bonuses. Catsiliras was initially not asked to and did not sign any written agreements governing his engagement.

10. In addition to YSL, Catsiliras performed work for the following Cresford companies (the **Cresford Employers**): Cresford Real Estate Corporation, Cresford (Rosedale) Developments Inc., East Downtown Redevelopment Partnership, 33 Yorkville Residences Inc., 33 Yorkville Residences Limited Partnership, 480 Yonge Street Inc., 480 Yonge Street Limited Partnership, The Clover On Yonge Inc., The Clover On Yonge Limited Partnership, and 9615334 Canada Inc.

11. Because Catsiliras worked for all of these Cresford companies, he was employed in common by all of them, including YSL, within the meaning set out in *Downtown Eatery (1993) Ltd. v. Ontario*, [2001 CanLII 8538](#) (Ont. C.A.) and *Nortel Networks Corporation (Re)*, [2016 ONSC 6030](#) because:

- (a) The Cresford Employers were under the common control of the same managers, who acted on behalf of each of the Cresford Employers;
- (b) YSL and each of the relevant project companies directed and exercised effective control over Catsiliras' activities relating to the associated real estate project;
- (c) Catsiliras' bonus entitlements were specifically linked to his work on YSL and the other project companies; and
- (d) YSL specifically acknowledged that it was liable for paying amounts to Catsiliras on behalf of other Cresford companies, as described in section VII below.

12. The Cresford Employers, including YSL, are accordingly jointly liable for all of the obligations owed to Catsiliras.

13. On March 5, 2020, Catsiliras, together with Sarven Cicekian, commenced an action against Cresford companies and certain directors and officers for breach of contract and oppression, later amended on September 22, 2020 (attached as **Attachment 1**). Catsiliras adopts each of the allegations in the action for the purposes of these claims. This action was stayed against Clover,

Halo and now YSL by the commencement of insolvency proceedings. As of the date of this claim, no statement of defence has been delivered in the action. The defendants have been noted in default but the parties are discussing terms of a potential consent order to set aside the default.

III. EARNED BONUS COMMISSIONS

14. Cresford's officers orally agreed to a bonus structure involving bonuses for sales of units in Cresford projects, which were paid by a project-specific Cresford corporation. Cresford and Catsiliras agreed to the following project-by-project commissions (together, the **Bonus Commissions**):

Project	Earned Bonus Commission	Future Bonus Commission
Halo	\$100,000	\$100,000
33 Yorkville	\$150,000	\$150,000
YSL	\$150,000	\$150,000
	<hr/> \$400,000	<hr/> \$400,000

15. Cresford and Catsiliras agreed that for each project, 50% of the Bonus Commission would be payable within a reasonable period following the project's launch, and the remaining 50% upon registration of the project's condominium corporation.

16. Catsiliras earned the first 50% of each Bonus Commission and claims these amounts. He does not claim the future Bonus Commissions payable upon the registration of the projects, as that milestone has not yet occurred.

17. In early December 2019, Catsiliras executed a Contracting Services Agreement (attached as **Attachment 2**), with amending schedules that confirmed certain bonus commissions previously

agreed to. The parties dated the schedules to reflect the approximate date on which the Bonus Commissions had been awarded, although the agreements were executed in December 2019.

18. YSL is liable for each of these earned Bonus Commissions as an employer in common of Catsiliras.

IV. COOPERATING COMMISSIONS

19. In addition to selling new units in the Cresford projects, Catsiliras also acted as a cooperating agent on behalf of some buyers of the units. Like other cooperating agents, Catsiliras earned commissions on those sales, which were set out in the relevant agreements of purchase and sale and recorded in the trade sheets maintained by Cresford Real Estate, Cresford's wholly owned brokerage company. These commissions were payable 50% when the agreement of purchase and sale became firm and 50% when the sale of the unit successfully closed. Cresford Real Estate invoiced the relevant Cresford project company seller for the cooperating commission, which was payable to the agent.

20. Catsiliras earned the following cooperating commissions on purchases of units in Cresford projects (the **Cooperating Commissions**):

Project	Earned Cooperating Commission	Future Cooperating Commission
Clover	\$10,376.50	\$10,376.50
33 Yorkville	\$84,197.00	\$84,197.00
YSL	\$53,500.50	\$53,500.50
	<hr/>	<hr/>
	\$148,073.50	\$148,073.50

21. As of January 2020, the first 50% of these cooperating commissions were earned by Catsiliras, for which YSL is jointly liable as an employer in common, together with HST.

V. BROKER POOL COMMISSIONS

22. Cresford's agents also facilitated the resale and lease of Cresford project units. For such transactions, Cresford Real Estate would credit the resulting commission to a "pool" of commissions. Half of the pooled commissions was payable to Cresford, and the remaining half was divided equally between Cresford's agents.

23. As of January 2020, Cresford Real Estate owed Catsiliras \$88,471 for these shared broker pool commissions (the **Broker Pool Commissions**), for which YSL is jointly liable as an employer in common, together with HST.

VI. CONSTRUCTIVE DISMISSAL

24. In December 2019, Catsiliras requested payment of the bonuses and commissions that he had earned to date. By the end of the year, Cresford had still failed to pay the commissions, and refused to provide a date by which it would do so. By so doing, Cresford constructively dismissed him.

25. On January 2, 2020, Catsiliras advised that as a result of non-payment and the deteriorating situation at Cresford, they would "resign" their positions effective in two weeks. As a matter of law, however, Catsiliras was constructively dismissed and did not resign.

26. Cresford has failed to pay Catsiliras pay in lieu of notice of termination, who is entitled to 6 24 months' salary in lieu of notice. Catsiliras' monthly compensation was \$4,000, plus HST. YSL is jointly liable as an employer in common for 6 24 months' pay in lieu of notice of termination, being \$30,646 ~~\$122,582~~ inclusive of HST.

VII. YSL'S ACKNOWLEDGMENT OF ITS LIABILITY FOR THE EARNED BONUS COMMISSIONS OWING

27. Cresford acknowledged that YSL was required to pay the bonuses that were owing to Mike Catsiliras. In December 2019, Cresford requested that Catsiliras invoice YSL for the \$150,000 in earned Bonus Commissions owing for each of 33 Yorkville and Halo. Catsiliras accordingly issued two invoices dated December 19, 2019 to YSL totaling \$339,000, inclusive of HST (attached as **Attachment 3**).

28. On March 31, 2020, Cresford created a list of accounts payable owed by YSL dated as of March 31, 2020 (attached as **Attachment 4**). On that list, YSL acknowledged that it owed Catsiliras an amount of \$282,500. Catsiliras is not aware of why this amount is less than the \$339,000 in earned Bonus Commissions that he was requested to invoice.

VIII. CLAIMS IN OTHER INSOLVENCY PROCEEDINGS

29. Catsiliras filed claims in the Clover and Halo proceedings that were substantially similar to the claims filed in this proceeding. Catsiliras has since resolved those claims with PwC, the monitor and receiver in those proceedings.

30. On June 2, 2021, PwC issued a revised notice of revision allowing \$125,000 in unsecured claims in the Halo proceeding (attached as **Attachment 5**). This acknowledged amount is equal to Catsiliras' \$100,000 earned Bonus Commission on the Halo project, plus an acknowledged credit of nearly \$25,000 on his purchase of a unit in the Halo project. Catsiliras withdrew his claims in the Clover CCAA proceeding.

31. Catsiliras has not yet received any distributions in respect of his \$125,000 in acknowledged claims in the Halo proceeding and does not presently know the amount of a future distribution, but will advise the proposal trustee of any distributions received and accepts that any such amounts are properly credited against the same claims herein. Because of the possibility that Catsiliras' Halo distribution amount will not be known before his within claim is valued for distribution purposes, Catsiliras has included an interim credit of \$68,750 in respect of this claim, being 55% of the claim amount. He understands that present estimates are that the distribution will be at this level or slightly above it.

Bankruptcy and Insolvency Act ("Act")

Proof of Claim

(Section 50.1, 81.5, 81.6, Subsections 65.2(4), 81.2(1), 81.3(8), 81.4(8), 102(2), 124(2), 128(1), and Paragraphs 51(1)(e) and 66.14(b) of the Act)

All notices or correspondence regarding this claim must be forwarded to the following address:

Creditor Name:	<u>Mike Catsiliras</u>	Telephone:	<u>(416) 768-9994</u>
Address:	<u>c/o James Gibson, Naymark Law</u>	Fax:	<u>(647) 660-5060</u>
	<u>171 John Street, Suite 101,</u>	Email:	<u>jgibson@naymarklaw.com</u>
	<u>Toronto, ON, M5T 1X3</u>		
Account No.:	<u>Nil</u>		

In the matter of the bankruptcy (or the proposal, or the receivership) of YSL Residences Inc. and YG Limited Partnership (*name of debtor*) of the City of Toronto, Ontario (*city and province*) and the claim of Mike Catsiliras, creditor.

I, Mike Catsiliras (*name of creditor or representative of the creditor*), of City of Toronto, Ontario (*city and province*), do hereby certify:

1. That I am a creditor of the above-named debtor (~~or that I am _____ (*state position or title*) of _____ (*name of creditor*)~~).
2. That I have knowledge of all the circumstances connected with the claim referred to below.
3. That the debtor was, at the date of bankruptcy, (or the date of the receivership, or in the case of a proposal, the date of the notice of intention or of the proposal, if no notice of intention was filed), namely the 30th day of April, 2021, and still is, indebted to the creditor in the sum of **\$841,877.00**, as specified in the statement of account (or affidavit) attached and marked **Schedule "A"**, after deducting any counterclaims to which the debtor is entitled. (The attached statement of account or affidavit must specify the vouchers or other evidence in support of the claim.)
4. (Check and complete appropriate category.)

A. UNSECURED CLAIM (AFFECTED CLAIM) OF \$841,877.00 (other than as a customer contemplated by Section 262 of the Act)
That in respect of this debt, I do not hold any assets of the debtor as security and
(Check appropriate description.)

Regarding the amount of \$839,877.00, I do not claim a right to a priority.

Regarding the amount of \$2,000.00, I claim a right to a priority under Section 136 of the Act.
(Set out on an attached sheet details to support priority claim.)
See **Schedule "B"**.

B. SECURED CLAIM OF \$0.00
That in respect of this debt, I hold assets of the debtor valued at \$ _____ as security, particulars of which are as follows:
(Give full particulars of the security, including the date on which the security was given and the value at which you assess the security, and attach a copy of the security documents.)

C. CONSTRUCTION LIEN CLAIM OF \$0.00
That in respect of this debt I have registered a lien on title to the Debtors' real property in accordance with the *Construction Act* (Ontario), particulars of which are as follows:

(Give full particulars of the lien, including the date on which the lien was registered and the value secured by such lien, and attach a copy of any relevant documents, including any statement of claim).

1. That, to the best of my knowledge, I am (or the above-named creditor is) (or am not or is not) related to the debtor within the meaning of Section 4 of the Act, and have (or has) (or have not or has not) dealt with the debtor in a non- arm's-length manner.
2. That the following are the payments that I have received from, the credits that I have allowed to, and the transfers at undervalue within the meaning of Subsection 2(1) of the Act that I have been privy to or a party to with the debtor within the three months (or, if the creditor and the debtor are related within the meaning of Section 4 of the Act or were not dealing with each other at arm's length, within the 12 months) immediately before the date of the initial bankruptcy event within the meaning of Subsection 2(1) of the Act: (Provide details of payments, credits and transfers at undervalue.)

Dated at City of Toronto, Ontario, this 11th day of June, 2021.



Witness



Creditor Authorized Signatory
Mike Catsiliras

NOTE: If an affidavit is attached, it must have been made before a person qualified to take affidavits.

WARNINGS: A trustee may, pursuant to Subsection 128(3) of the Act, redeem a security on payment to the secured creditor of the debt or the value of the security as assessed, in a proof of security, by the secured creditor.

Subsection 201(1) of the Act provides severe penalties for making any false claim, proof, declaration or statement of account.

DIRECTIONS FOR COMPLETION OF THIS FORM ARE ON THE REVERSE SIDE

CONDITIONAL CLAIM ADDENDUM

By checking the box below, you are electing for your Claim to be treated as a Conditional Claim (as defined in the Proposal). By electing for your claim to be treated as a Conditional Claim, you are recognizing that:

- a) One or more contractual conditions in your arrangements with the Company were not satisfied as at April 30, 2021 (referred to in the Proposal as "Conditional Claim Conditions");
- b) You are undertaking to complete all Conditional Claim Conditions and provide proof of such completion by no later than the Conditional Claim Completion Deadline; and
- c) You understand that the failure to complete all Conditional Claim Conditions by the Conditional Claim Completion Deadline will result in your Claim being fully, finally and irrevocably disallowed.

I hereby elect for my Claim to be treated as a Conditional Claim:

Creditor Authorized Signatory

TAB A

ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
COMMERCIAL LIST

B E T W E E N:

IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985,
C. B-3, AS AMENDED

IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF
YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC.

Applicants

AFFIDAVIT OF MIKE CATSILIRAS
(Sworn on June 13, 2021)

I, MIKE CATSILIRAS, of the City of Toronto, Ontario, MAKE OATH AND SAY:

1. I am a creditor in this proceeding, and as such have knowledge of the matters contained in this affidavit. Where my knowledge is based on information from other sources, I state the source of that information and believe the information to be true.
2. I confirm that the information contained in the particulars of claim attached as **Exhibit "A"**, together with the supporting attachments, is accurate and I adopt it for the purposes of this affidavit.

3. I make this affidavit in support of a proof of claim in this proceeding, and for no other or improper purpose.

SWORN by videoconference technology by the deponent, located in the City of Toronto, Ontario, before the commissioner, located in the City of Toronto, Ontario in accordance with O. Reg. 431/20, Adminstrating Oath Remotely on June 13, 2021

}



Commissioner for Taking Affidavits
JAMES GIBSON



MIKE CATSILIRAS

THIS IS EXHIBIT "A" REFERRED TO
IN THE AFFIDAVIT OF MIKE CATSILIRAS
SWORN BEFORE ME, THIS 13TH DAY OF JUNE, 2021



JAMES GIBSON

A Commissioner Etc.

EXHIBIT "A" – PARTICULARS OF CLAIMS
--

1. THE CLAIMS (together, the **Claims**) as against YG Limited Partnership and YSL Residences Inc. (together, **YSL**) are:

- (a) damages for constructive dismissal: \$122,582, being contractual pay in lieu of 24 months' notice, inclusive of HST;
- (b) earned Bonus Commission (as defined below) on the Halo project, inclusive of HST: \$113,000;
- (c) earned Bonus Commission on the 33 Yorkville project, inclusive of HST: \$169,500;
- (d) earned Bonus Commission on the YSL project, inclusive of HST: \$169,500;
- (e) earned Cooperating Commissions (as defined below), inclusive of HST: \$167,322;
and
- (f) earned Broker Pool Commissions (as defined below), inclusive of HST: \$99,972.

2. The total value of the Claims is: \$841,877.

I. OVERVIEW

3. Mike Catsiliras (**Catsiliras**) was employed in common by a number of Cresford companies, including YSL, until his constructive dismissal in late 2019.

4. Catsiliras earned significant bonus commissions for assisting with the launch of the 33 Yorkville, Halo and YSL projects, amounts that were acknowledged in Catsiliras' written employment agreement. As well, Catsiliras earned cooperating commissions and broker pool commissions from marketing Cresford projects.

5. In December 2019, Catsiliras requested payment of the bonuses and commissions that he had earned to date and that were then overdue for payment. Cresford failed to pay the commissions, and refused to provide a date by which it would do so. By so doing, Cresford constructively dismissed him. Catsiliras is accordingly owed damages in lieu of notice as a result of his dismissal.

6. YSL has acknowledged that it owes Catsiliras at least a portion of these amounts. Cresford requested that Catsiliras issue invoices to YSL for \$300,000 in bonus commissions that were owing. YSL's chart of accounts payable acknowledged that it owed Catsiliras \$282,500.

7. PricewaterhouseCoopers (**PwC**) has already approved claims by Catsiliras in insolvency proceedings of related Cresford entities, in which PwC is court-appointed Receiver. Catsiliras will receive some limited recovery of the amounts owed to him via the Halo proceeding. He now submits a claim for the balance.

II. CATSILIRAS' EMPLOYMENT BY CRESFORD

8. YSL is part of a commonly owned group of companies and partnerships (together, **Cresford**) engaged in the development, construction, marketing and sale of condominiums in Toronto, Ontario under the business name Cresford. Cresford conducts its real estate development

business through a series of project companies that hold title to and carry out individual development projects.

9. In around 2015, Cresford hired Catsiliras as a sales representative. Catsiliras' primary responsibility was to market and sell units in the Cresford projects. Catsiliras was remunerated through fixed monthly payments, commissions and bonuses. Catsiliras was initially not asked to and did not sign any written agreements governing his engagement.

10. In addition to YSL, Catsiliras performed work for the following Cresford companies (the **Cresford Employers**): Cresford Real Estate Corporation, Cresford (Rosedale) Developments Inc., East Downtown Redevelopment Partnership, 33 Yorkville Residences Inc., 33 Yorkville Residences Limited Partnership, 480 Yonge Street Inc., 480 Yonge Street Limited Partnership, The Clover On Yonge Inc., The Clover On Yonge Limited Partnership, and 9615334 Canada Inc.

11. Because Catsiliras worked for all of these Cresford companies, he was employed in common by all of them, including YSL, within the meaning set out in *Downtown Eatery (1993) Ltd. v. Ontario*, [2001 CanLII 8538](#) (Ont. C.A.) and *Nortel Networks Corporation (Re)*, [2016 ONSC 6030](#) because:

- (a) The Cresford Employers were under the common control of the same managers, who acted on behalf of each of the Cresford Employers;
- (b) YSL and each of the relevant project companies directed and exercised effective control over Catsiliras' activities relating to the associated real estate project;

- (c) Catsiliras' bonus entitlements were specifically linked to his work on YSL and the other project companies; and
- (d) YSL specifically acknowledged that it was liable for paying amounts to Catsiliras on behalf of other Cresford companies, as described in section VII below.

12. The Cresford Employers, including YSL, are accordingly jointly liable for all of the obligations owed to Catsiliras.

13. On March 5, 2020, Catsiliras, together with Sarven Cicekian, commenced an action against Cresford companies and certain directors and officers for breach of contract and oppression, later amended on September 22, 2020 (attached as **Attachment 1**). Catsiliras adopts each of the allegations in the action for the purposes of these claims. This action was stayed against Clover, Halo and now YSL by the commencement of insolvency proceedings. As of the date of this claim, no statement of defence has been delivered in the action. The defendants have been noted in default but the parties are discussing terms of a potential consent order to set aside the default.

III. EARNED BONUS COMMISSIONS

14. Cresford's officers orally agreed to a bonus structure involving bonuses for sales of units in Cresford projects, which were paid by a project-specific Cresford corporation. Cresford and Catsiliras agreed to the following project-by-project commissions (together, the **Bonus Commissions**):

Project	Earned Bonus Commission	Future Bonus Commission
Halo	\$100,000	\$100,000
33 Yorkville	\$150,000	\$150,000
YSL	\$150,000	\$150,000
	<hr/> \$400,000	<hr/> \$400,000

15. Cresford and Catsiliras agreed that for each project, 50% of the Bonus Commission would be payable within a reasonable period following the project's launch, and the remaining 50% upon registration of the project's condominium corporation.

16. Catsiliras earned the first 50% of each Bonus Commission and claims these amounts. He does not claim the future Bonus Commissions payable upon the registration of the projects, as that milestone has not yet occurred.

17. In early December 2019, Catsiliras executed a Contracting Services Agreement (attached as **Attachment 2**), with amending schedules that confirmed certain bonus commissions previously agreed to. The parties dated the schedules to reflect the approximate date on which the Bonus Commissions had been awarded, although the agreements were executed in December 2019.

18. YSL is liable for each of these earned Bonus Commissions as an employer in common of Catsiliras.

IV. COOPERATING COMMISSIONS

19. In addition to selling new units in the Cresford projects, Catsiliras also acted as a cooperating agent on behalf of some buyers of the units. Like other cooperating agents, Catsiliras earned commissions on those sales, which were set out in the relevant agreements of purchase and

sale and recorded in the trade sheets maintained by Cresford Real Estate, Cresford’s wholly owned brokerage company. These commissions were payable 50% when the agreement of purchase and sale became firm and 50% when the sale of the unit successfully closed. Cresford Real Estate invoiced the relevant Cresford project company seller for the cooperating commission, which was payable to the agent.

20. Catsiliras earned the following cooperating commissions on purchases of units in Cresford projects (the **Cooperating Commissions**):

Project	Earned Cooperating Commission	Future Cooperating Commission
Clover	\$10,376.50	\$10,376.50
33 Yorkville	\$84,197.00	\$84,197.00
YSL	\$53,500.50	\$53,500.50
	<hr/>	<hr/>
	\$148,073.50	\$148,073.50

21. As of January 2020, the first 50% of these cooperating commissions were earned by Catsiliras, for which YSL is jointly liable as an employer in common, together with HST.

V. BROKER POOL COMMISSIONS

22. Cresford’s agents also facilitated the resale and lease of Cresford project units. For such transactions, Cresford Real Estate would credit the resulting commission to a “pool” of commissions. Half of the pooled commissions was payable to Cresford, and the remaining half was divided equally between Cresford’s agents.

23. As of January 2020, Cresford Real Estate owed Catsiliras \$88,471 for these shared broker pool commissions (the **Broker Pool Commissions**), for which YSL is jointly liable as an employer in common, together with HST.

VI. CONSTRUCTIVE DISMISSAL

24. In December 2019, Catsiliras requested payment of the bonuses and commissions that he had earned to date. By the end of the year, Cresford had still failed to pay the commissions, and refused to provide a date by which it would do so. By so doing, Cresford constructively dismissed him.

25. On January 2, 2020, Catsiliras advised that as a result of non-payment and the deteriorating situation at Cresford, they would “resign” their positions effective in two weeks. As a matter of law, however, Catsiliras was constructively dismissed and did not resign.

26. Cresford has failed to pay Catsiliras pay in lieu of notice of termination, who is entitled to 24 months’ salary in lieu of notice. Catsiliras’ monthly compensation was \$4,000, plus HST. YSL is jointly liable as an employer in common for 24 months’ pay in lieu of notice of termination, being \$122,582 inclusive of HST.

VII. YSL’S ACKNOWLEDGMENT OF ITS LIABILITY FOR THE EARNED BONUS COMMISSIONS OWING

27. Cresford acknowledged that YSL was required to pay the bonuses that were owing to Mike Catsiliras. In December 2019, Cresford requested that Catsiliras invoice YSL for the \$150,000 in earned Bonus Commissions owing for each of 33 Yorkville and Halo. Catsiliras accordingly issued

two invoices dated December 19, 2019 to YSL totaling \$339,000, inclusive of HST (attached as **Attachment 3**).

28. On March 31, 2020, Cresford created a list of accounts payable owed by YSL dated as of March 31, 2020 (attached as **Attachment 4**). On that list, YSL acknowledged that it owed Catsiliras an amount of \$282,500. Catsiliras is not aware of why this amount is less than the \$339,000 in earned Bonus Commissions that he was requested to invoice.

VIII. CLAIMS IN OTHER INSOLVENCY PROCEEDINGS

29. Catsiliras filed claims in the Clover and Halo proceedings that were substantially similar to the claims filed in this proceeding. Catsiliras has since resolved those claims with PwC, the monitor and receiver in those proceedings.

30. On June 2, 2021, PwC issued a revised notice of revision allowing \$125,000 in unsecured claims in the Halo proceeding (attached as **Attachment 5**). This acknowledged amount is equal to Catsiliras' \$100,000 earned Bonus Commission on the Halo project, plus an acknowledged credit of nearly \$25,000 on his purchase of a unit in the Halo project. Catsiliras withdrew his claims in the Clover CCAA proceeding.

31. Catsiliras has not yet received any distributions in respect of his \$125,000 in acknowledged claims in the Halo proceeding and does not presently know the amount of a future distribution, but will advise the proposal trustee of any distributions received and accepts that any such amounts are properly credited against the same claims herein.

Attachment 1

AMENDED THIS September 22nd, 2020 PURSUANT TO
MODIFIÉ CE A- CONFORMÉMENT À
 RULE/LA RÈGLE 26 02 (A-)
 THE ORDER OF _____
L'ORDONNANCE DU _____
DATED / FAIT LE _____

Court File No. CV-20-00637543-0000

REGISTRAR / GREFFIER
SUPERIOR COURT OF JUSTICE / COUR SUPÉRIEURE DE JUSTICE
ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

SARVEN CICEKIAN and MIKE CATSILIRAS

Plaintiffs

- and -

CRESFORD REAL ESTATE CORPORATION, CRESFORD (ROSEDALE)
DEVELOPMENTS INC., EAST DOWNTOWN REDEVELOPMENT
PARTNERSHIP, 33 YORKVILLE RESIDENCES INC., 33 YORKVILLE
RESIDENCES LIMITED PARTNERSHIP, 480 YONGE STREET INC., 480
YONGE STREET LIMITED PARTNERSHIP, THE CLOVER ON YONGE INC.,
THE CLOVER ON YONGE LIMITED PARTNERSHIP, YSL RESIDENCES INC.,
YG LIMITED PARTNERSHIP, 9615334 CANADA INC., DANIEL C. CASEY and
DAVID MANN

Defendants

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff.
The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for
you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure,
serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the
plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this
statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of
America, the period for serving and filing your statement of defence is forty days. If you are served
outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of
intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to
ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$5,000 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for costs and have the costs assessed by the court.

Date: March 5, 2020

Issued by: "@V-E Filing"
Local Registrar
Ontario Superior Court of Justice
330 University Avenue, Toronto ON

TO: NELLIGAN O'BRIEN PAYNE LLP
50 O'Connor Street, Suite 300
Ottawa, ON K1P 6L2

Allan R. O'Brien (LSO No. 15326T)
allan.obrien@nelliganlaw.ca
Tel 613.231.8224
Fax 613.788.3654

Counsel for the Defendants

CLAIM

1. The plaintiffs, Sarven Cicekian and Mike Catsiliras, claim as against the defendants:
 - (a) damages for breach of contract and oppression in the amount of \$1,600,000 \$1,400,000 plus harmonized sales tax, including in relation to the outstanding Bonus Commissions, Cooperating Commissions, Broker Pool Commissions and Other Commissions (as defined below) and constructive dismissal;
 - (b) damages for breach of contract and oppression in the further amounts set out below, plus harmonized sales tax:
 - (i) \$900,000, which was payable upon the completion of the projects that are the subject of the Bonus Commissions (as defined below) prior to the defendants' breach;
 - (ii) \$199,818, which was payable upon the final closing of the units that are the subject of the Cooperating Commissions (as defined below) prior to the defendants' breach;
 - (c) a declaration pursuant to section 248 of the *Business Corporations Act*, RSO 1990, c B.16 (*OBCA*) that the business of the corporate defendants and their affiliates was conducted, and the powers of their directors were exercised, in a manner that was oppressive, unfairly prejudicial and unfairly disregarded the interests of the plaintiffs;

- (d) an order pursuant to section 248 of the *OBCA* that this Honourable Court finds appropriate, including compensating the plaintiffs for the defendants' oppressive conduct;
- (e) a declaration that Casey is liable to each of the plaintiffs for an amount equal to six months' wages under section 131 of the *Business Corporations Act*, RSO 1990, c B.16;
- (f) pre- and post-judgment interest in accordance with the *Courts of Justice Act*, RSO 1990, c C.43, as amended (*CJA*);
- (g) costs of this action on a full indemnity basis; and
- (h) such further and other relief as the nature of this case may require and this Honourable Court deems just.

A. Parties

2. The plaintiffs Sarven Cicekian (**Cicekian**) and Mike Catsiliras (**Catsiliras**) are registered real estate salespersons and residents of Toronto. As described below, the plaintiffs were engaged to sell units in a number of condominium projects.

3. The corporate defendants (together, **Cresford**) are each Ontario corporations and partnerships. They are each part of a group of companies and partnerships engaged in the development, construction, marketing and sale of condominiums in Toronto, Ontario under the business name Cresford, including the following condominium projects:

- (a) The Clover on Yonge (**Clover**), a 44-storey condominium located near Yonge and Bloor owned by Clover on Yonge Inc. in its capacity as general partner of Clover on Yonge Limited Partnership;
- (b) Halo Residences on Yonge (**Halo**), a 38-storey condominium tower located on Yonge Street between Wellesley and Carlton in Toronto owned by 480 Yonge Street Inc., the general partner of 480 Yonge Street Limited Partnership;
- (c) The Residences of 33 Yorkville (**33 Yorkville**), a condominium with one 64- storey tower and one 41-storey tower owned by 33 Yorkville Residences Inc., in its capacity as general partner of 33 Yorkville Residences Limited Partnership; and
- (d) Yonge Street Living Residences (**YSL**), an 85-storey condominium tower located at the corner of Yonge and Gerrard in Toronto, which is owned by YSL Residences Inc. and 9615334 Canada Inc. in its capacity as the general partner of YG Limited Partnership.

4. The defendant Cresford Real Estate Corporation (**Cresford Real Estate**) is a corporation in the Cresford Group and a registered real estate brokerage.

5. The defendant Cresford (Rosedale) Developments Inc. is a company in the Cresford Group that was involved in producing a written agreement related to the Bonus Commissions, as described below.

6. The defendant East Downtown Redevelopment Partnership acts as a management company for the Cresford Group.

7. The defendant, Daniel Casey (**Casey**), is an individual resident in Ontario. At all material times, Casey was the principal of Cresford and is the beneficial owner of and controls the corporate defendants.

8. The defendant, David Mann (**Mann**), is an individual resident in Ontario. At all material times, Mann was the Chief Financial Officer of Cresford.

9. The following defendants are now subject to stays of proceedings imposed as a result of insolvency proceedings:

(a) 33 Yorkville Residences Inc. and 33 Yorkville Residences Limited Partnership are subject to a court-appointed receivership (CV-20-00637297-00CL) under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (**BIA**);

(b) 480 Yonge Street Inc. and 480 Yonge Street Limited Partnership are subject to a court-appointed receivership (CV-20-00637301-00CL) under the BIA; and

(c) The Clover On Yonge Inc. and The Clover On Yonge Limited Partnership were subject to a court-appointed receivership (CV-20-00637301-00CL) under the BIA, which was converted into a proceeding under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 (CV-20-00642928-00CL).

B. Plaintiffs' Employment by Cresford

10. In March 2013, Cresford hired Cicekian as a sales representative. In that role, Cicekian was responsible for selling new condominium units in Cresford developments, and for reselling and leasing previously sold units.

11. In 2015, Cresford promoted Cicekian to Director of Sales, with expanded responsibilities including the supervision of three sales staff and four administrative staff. At around the same time, Cresford hired Catsiliras as a sales representative.

12. Prior to 2017, Cicekian and Catsiliras each maintained their realtor registration with an independent brokerage, through which each performed their sales and leasing activities for Cresford. In 2017, Cresford opened its own brokerage, Cresford Real Estate, through which Cicekian and Catsiliras then undertook these activities. Cicekian became broker of record for Cresford Real Estate.

13. At around this time, Cresford further promoted Cicekian to the position of Vice President of Sales, with expanded responsibilities that included exercising signing authority on behalf of Cresford for sales matters. Catsiliras was promoted to the position of Director of Sales.

14. At the material times, Cicekian reported directly to Maria Athanasoulis (**Athanasoulis**), the President and Chief Operating Officer of Cresford. Catsiliras reported to Cicekian.

15. The plaintiffs' primary responsibility was to market and sell units in the Cresford projects, including at the "launch" or initial offering of the condominium units made over a period of two or three days. Cresford's typical goal was to sell up to 75 percent of the new units in a project during the launch. The launch and the preceding month were accordingly periods of intense activity for Cresford's salespeople. As described below, the plaintiffs also acted as agents for the lease and resale of Cresford project units.

C. Commissions for Sales of New Project Units

16. The plaintiffs were remunerated through fixed monthly payments, commissions and bonuses, which are described below. This remuneration was set in agreement with Casey and Athanasoulis, acting on behalf of Cresford. Aside from the written bonus agreements described below, the plaintiffs were not asked to and did not sign any written agreements governing their engagement, other than one written agreement signed by Cicekian in 2013 relating to a discrete Cresford project not in issue.

17. Prior to the launch of each Cresford development project, Athanasoulis, on behalf of Cresford, orally agreed to a commission structure with each of Cicekian and Catsiliras. For these new unit sales, a project-specific Cresford corporation paid the plaintiffs, not Cresford Real Estate. These Cresford projects were employers or contractors of the plaintiffs in common with the brokerage and exercised common control over their activities.

18. Cresford generally offered discounted prices and lower deposit amounts for project units to the plaintiffs, as an incentive to purchase units. In some cases, the plaintiffs agreed with Cresford that their commissions would be credited towards the deposit and purchase price of a unit that they were purchasing in the project, rather than being paid to the plaintiffs in cash.

19. For earlier projects, Cresford agreed to pay a flat commission per unit sold, payable 50% when the agreement of purchase and sale became firm and 50% when the sale of the unit successfully closed. For example, Cicekian was awarded bonus commissions on prior projects in the following approximate amounts: Casa 3 (\$124,000), VOX (\$119,000) and Clover (\$256,000). Catsiliras received approximately \$125,000 in bonus commissions on the Clover project.

20. In or around the summer of 2016, the plaintiffs’ commission structure changed. Given a shorter selling period and the success of the prior launches, Athanasoulis and the plaintiffs agreed to move to a lump sum, per-project bonus commission payable for each project. The amounts of these commissions were discussed and agreed upon prior to each project’s launch. Approximately \$150,000 in bonus commissions on the Halo project were awarded to Cicekian in this fashion.

21. In accordance with this arrangement, Cresford and the plaintiffs agreed to the following project-by-project commissions (together, the **Bonus Commissions**):

Agent	Project	Bonus Commission
Mike Catsiliras	Halo	\$200,000
	33 Yorkville	\$300,000
	YSL	\$300,000
Total		<hr/> \$800,000
Sarven Cicekian	33 Yorkville	\$500,000
	YSL	\$500,000
Total		<hr/> \$1,000,000

22. Cresford and the plaintiffs agreed that for each project, 50% of the Bonus Commission would be payable within a reasonable period following project launch, and the remaining 50% upon registration of the project’s condominium corporation. The plaintiffs had a trusting relationship with Athanasoulis and were invested in Cresford’s success, and so did not insist on a firm deadline for payment of the first 50% of each Bonus Commission.

23. In early December 2019, the plaintiffs and Athanasoulis took steps to memorialize the unpaid Bonus Commissions that the plaintiffs had earned. The plaintiffs each executed a Contracting Services Agreement, with amending schedules that confirmed the Bonus

Commissions payable for those projects. Athanasoulis signed each contract on behalf of Cresford (Rosedale) Developments Inc., acting as agent for the relevant Cresford project companies. The parties dated the schedules to reflect the approximate date on which the Bonus Commissions had been awarded, although the agreements were executed in December 2019.

24. The plaintiffs and Athanasoulis used template agreements without the assistance of counsel. The primary purpose of these written agreements was to memorialize the Bonus Commission amounts previously agreed to orally. They did not intend to alter any terms of those prior agreements. To the extent that the written agreements are interpreted to do so, the plaintiffs seek an order that those agreements be rectified.

25. By that point, Cresford's business was in financial distress and had failed to pay commissions owing to cooperating agents from other brokerages. Casey failed to provide a clear plan to address these issues. As Cresford's face in the broker community, the plaintiffs' professional reputations began to suffer. Athanasoulis' management authority was removed after she raised concerns about the deteriorating situation at Cresford.

D. Cooperating Commissions

26. In addition to selling new units in the Cresford projects, the plaintiffs also acted as cooperating agents on behalf of some buyers of the units. Like other cooperating agents, the plaintiffs earned commissions on those sales, which were set out in the relevant agreements of purchase and sale and recorded in the trade sheets maintained by Cresford Real Estate. These commissions were payable 50% when the agreement of purchase and sale became firm and 50%

when the sale of the unit successfully closed. Cresford Real Estate invoiced the relevant Cresford project company seller for the cooperating commission, which was payable to the agent.

27. The plaintiffs earned the following cooperating commissions on purchases of units in Cresford projects (the **Cooperating Commissions**):

Agent	Project	Cooperating Commission
Mike Catsiliras	Clover	\$20,753
	33 Yorkville	\$168,394
	YSL	\$107,001
Total		<hr/> \$296,147
Sarven Cicekian	33 Yorkville	\$103,488
Total		<hr/> \$103,488

28. As of January 2020, 50% of these cooperating commissions (\$199,818) were due and payable to the plaintiffs, with the balance payable on the closing of the relevant units.

E. Broker Pool Commissions

29. Cresford’s agents also facilitated the resale and lease of Cresford Project units. For such transactions, Cresford Real Estate would credit the resulting commission to a “pool” of commissions. Half of the pooled commissions was payable to Cresford, and the remaining half was divided equally between Cresford’s agents. As of January 2020, Cresford Real Estate owed Cicekian and Catsiliras \$93,471 and \$88,471 respectively in these shared broker pool commissions (the **Broker Pool Commissions**).

F. Other Commissions

30. The plaintiffs also earned commissions, payable by Cresford Real Estate on a resale/assignment transaction carried out by Cicekian (in an amount of \$24,500) and a lease transaction carried out by Catsiliras (in an amount of \$1,000) (the **Other Commissions**).

G. The Plaintiffs' Departure from Cresford

31. The plaintiffs dedicated themselves to Cresford's business and were an instrumental part of the marketing and sale of Cresford's projects. When Cresford had issues with its cash flow, the plaintiffs did not insist on immediate payment of their bonuses and commissions. They were invested in the success of Cresford's enterprises.

32. Over time, the plaintiffs became disenchanted with the way in which Cresford was carrying on business, including its failure to pay third party agent commissions from sales of Cresford project units. The plaintiffs began to be bombarded with agents' demands for payment and found themselves having to defend Cresford, when they themselves were owed over \$1 million in commissions. The plaintiffs repeatedly insisted that Cresford meet its financial obligations to these other agents and their professional reputations deteriorated when Cresford refused to do so.

33. In December 2019, Cicekian requested payment of the commissions that he had earned to date. By the end of the year, Cresford had still failed to pay the plaintiffs, and refused to provide a date by which it would do so. By so doing, Cresford constructively dismissed the plaintiffs.

34. On January 2, 2020, the plaintiffs advised that as a result of non-payment and the deteriorating situation at Cresford, they would "resign" their positions effective in two weeks. As a matter of law, however, the plaintiffs were constructively dismissed and did not resign. Shortly

afterwards, Casey advised each of them that they were not to return to work. Cicekian therefore ceased acting as broker of record for Cresford Real Estate effective January 6, 2020, as he could no longer carry out those responsibilities.

35. After their departure, the plaintiffs detailed the amount of the overdue Broker Pool and Other Commissions and demanded that they be paid. The plaintiffs had previously issued invoices for the Cooperating Commissions. The plaintiffs also demanded a firm timeline for when the Bonus Commissions would be paid to them.

36. Mann confirmed that the amounts of Broker Pool and Other Commissions claimed were correct. However, he advised that Cresford would withhold payment until Cicekian signed the necessary documents to transfer Cresford Real Estate to another broker of record. Cicekian did so, but Mann nevertheless failed to authorize payment of the outstanding commissions despite his representation that he would do so.

37. As of the date of this statement of claim, Cresford has failed to make any payments of the outstanding amounts owing to them.

H. Breach of Contract

38. The plaintiffs performed in good faith the services asked of them by Cresford. Despite the plaintiffs' repeated demands, Cresford has breached its obligation to pay the commissions owing, including the Cooperating Commissions, the Broker Pool Commissions, and the Other Commissions.

39. In addition, each of the relevant Cresford companies undertook to pay the Bonus Commissions owed to the plaintiffs for their efforts in marketing their units, as memorialized in the written bonus agreement. These defendants have breached their obligation to pay the first installments of the Bonus Commissions that are immediately owing and have repudiated their obligation to pay the second installment of those commissions.

I. Constructive Dismissal

40. By persistently refusing to honour the plaintiffs' employment entitlements, Cresford implemented significant changes to the plaintiffs' employment. The essential terms and conditions of the plaintiffs' employment substantially changed as a consequence of Cresford's actions.

41. Cresford did not consult the plaintiffs before implementing these changes. Rather, Cresford continually delayed and reneged on its promises to induce the plaintiffs to continue working for Cresford.

42. As pleaded at paragraph 32 to 34 above, these changes to the plaintiffs' employment, imposed by Cresford, amount to constructive dismissal. The changes were substantial and detrimental, and entitled the plaintiffs to terminate their contracts of employment and claim damages in lieu of reasonable notice.

43. Cresford has failed to pay the plaintiffs pay in lieu of notice of termination, who are entitled to 24 months' salary, vacation entitlements, and other employment benefits, in an amount to be particularized prior to trial.

J. Oppression

44. The plaintiffs reasonably expected that the corporate defendants would manage their affairs in accordance with their legal obligations, including their obligation to act with a view to the best interests of the corporation. The plaintiffs reasonably expected that the corporate defendants would use the funds that it had earmarked to pay broker commissions for that purpose.

45. Instead, the corporate defendants withheld funds from Cresford Real Estate in order to address the deteriorating financial condition of Cresford's business. In carrying out the conduct described above, the defendants conducted the corporations' affairs in a manner that was oppressive, unfairly prejudicial and unfairly disregarded the interests of the plaintiffs.

46. By causing, permitting or acquiescing to this conduct and by misrepresenting and concealing it, Casey and Mann acted oppressively towards the plaintiffs in bad faith. It is appropriate to order a personal remedy against them because they personally benefited from withholding those funds to benefit other corporations under their control, they breached their duties to the corporation, and a remedy ordered against only Cresford Real Estate may prejudice the corporation's other creditors.

K. Liability under the *OBCA*

47. At the material times, Casey was a director of each of the Cresford companies. Under section 131 of the *OBCA*, he is liable to the plaintiffs for all debts not exceeding six months' wages that became payable while he was a director for the services performed by the plaintiffs for Cresford, including all amounts claimed in this action.

L. Place of Trial

48. The plaintiffs propose that this action be tried in Toronto.

NAYMARK LAW

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Toronto, Ontario M5T 1X3

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Lawyers for the Plaintiffs,
Sarven Cicekian and Mike Catsiliras

CICEKIAN et. al.
Plaintiffs

- and -

CRESFORD REAL ESTATE CORPORATION et. al.
Defendants

Court File No. Court File No. CV-20-00637543-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

AMENDED STATEMENT OF CLAIM

NAYMARK LAW

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Lawyer for the Plaintiffs, Sarven Cicekian and Mike
Catsiliras

Attachment 2

CONTRACTING SERVICES AGREEMENT

BETWEEN:

Cresford (Rosedale) Developments Inc, a company having its office at 170 Merton Street, Toronto, ON M4S 1A1

(hereinafter referred to as "Cresford")

-And-

Mike Catsiliras

(hereinafter referred to as the "Contractor")

WHEREAS the Company agrees to contract for the services of the Contractor, and the Contractor agrees to enter a contract for provision of such services;

NOW THEREFORE, in the consideration of the mutual covenants and agreements herein contained, the parties agree, each with the other, as follows:

1. Commencement

Service under this Agreement shall commence on September 1, 2016 and shall continue until terminated as provided in paragraph 7.

Terms are as follows:

- a. The Contractor will receive a monthly service fee in the amount of FOUR THOUSAND DOLLARS, plus HST, (\$4000 + HST) to be paid semi-monthly on the 15th and 30th of each month (or the closest business day). Invoices will require a minimum of 5 business days for processing. Invoices submitted late may result in delayed payment.
- b. The Contractor will receive a commission, as outlined in the attached Schedule A, on the firm sale of the units for projects by Cresford as outlined in Schedule A.
- c. Commission is payable per the attached Schedule A.
- d. No commission is payable on any corporate head office or insider sales, unless otherwise stated and agreed to.
- e. Service fees and commissions are project defined and are subject to change. Any change shall be reflected in writing, requiring both the Contractor and an authorized Cresford signing officer to sign and acknowledge said changes.
- f. The Contractor is entitled to enroll in the company's health benefit program for contractors. The Contractor shall not be entitled to any other benefits or any other compensation other than said health benefits, the monthly service fee noted in paragraph 1a and the commission noted in Schedule A.
- g. The Contractor shall be entitled to remit for certain pre-approved expenses, if applicable.
- h. This Agreement supersedes any other agreement, whether oral, written or otherwise, previously made between you and Cresford.

2. Status

The Contractor is, for all intents and purposes, considered to be an independent real estate contractor. As such, you are not required to work exclusively for Cresford. It is understood and agreed that there is no employer-employee relationship between Cresford and the Contractor, and nothing shall be construed to create such a relationship.

While the Contractor agrees to exercise his/her attention and efforts in performing the services listed in paragraph 1 herein, the Company agrees that during the term of the Contract the Contractor is free to provide services to other organizations on the condition that the provision of such services is not provided to businesses or clients who offer related services in Ontario or who are competitors of the Company in Ontario without prior notification and that such services does not interfere with the performance of services hereunder and does not bring the Contractor into a conflict of interest or perception of a conflict of interest with the Company or his/her contract with the Company.

The Contractor shall be responsible and assumes full liability for all monies owing by him on account of any and all statutory obligations, including monies owed as income tax and H.S.T.

The Contractor represents and warrants that he/she is an independent Contractor. This is not a contract of employment and the Contractor shall not be treated as if he/she had an employment relationship with the Company. The Contractor covenants and agrees to save harmless and indemnify the Company from and against all claims, including charges, taxes, penalties or demands which may be made by the Minister of National Revenue requiring the Company to pay income tax under the *Income Tax Act (Canada)* in respect of income tax payable by the Contractor, and in respect of any and all claims, including charges, taxes, penalties or demands which may be made on behalf of or related to the Employment Insurance Commission, the Ministry of Labour, the Canada Pension Commission or any other statutory body under the applicable Statutes and Regulation, with respect to any amount which has been paid or may, in the future, be found to be payable by the Company to the Contractor.

3. Commissions

The Contractor shall receive commissions in accordance with Section 1 or as otherwise provided for in this Agreement. All payments due the Contractor shall be paid within 45 days of the receipt by Cresford of the corresponding commission, such payments are subject to any set-offs or deduction as otherwise provided for in this Agreement or in any schedule attached hereto.

4. Indemnity

The Contractor shall indemnify and save Cresford harmless from any and all expenses, costs, causes of action and damages, including legal expenses, incurred by Cresford resulting from: (i) any and all unauthorized acts or transactions by the Contractor or your employees, if any; (ii) negligent acts committed by the Contractor or your employees, if any, and (iii) any breach of this Agreement by the Contractor.

5. Confidentiality

The Contractor agrees that both during and after termination of this Agreement: (i) the Contractor will keep the business affairs of Cresford secret and confidential, including the Contractor's commission structure, (ii) the Contractor will not use any marketing and/or administrative reports, programs, purchase lists, copies, or other intellectual property of Cresford save and except for purposes of performing the Contractor's duties to Cresford pursuant to this Agreement, and (iii) during the term of this Agreement the Contractor agrees names of all prospects for the purpose of condominium sales obtained by the Contractor during the term of this Agreement are and shall remain property of Cresford and their clients and the Contractor shall not contact such prospects or in any way deal with them for the listing of sales or rental of condominium units or other real property without prior written approval from Cresford.

6. Errors and Omissions

The Contractor will secure and maintain proper Errors and Omissions Insurance in such amounts as required by Cresford at the Contractor’s sole expense and will provide proof of such coverage upon request by Cresford. If the Contractor fails to pay for such insurance coverage, the Contractor hereby authorizes Cresford to pay for it on your behalf and set-off said amounts against any amounts owed to the Contractor.

7. Termination

Cresford may terminate this Agreement for any reason whatsoever upon providing fifteen (15) days written notice to the Contractor. In addition to the forgoing, Cresford shall have the right to terminate this Agreement immediately upon written notice to the Contractor for any one or more of the following reasons (“Termination Event”):

- a. A material breach of any representation, warranty or covenant on part of the Contractor contained in this Agreement or any schedule attached hereto;

The Contractor may terminate this Agreement for any reason whatsoever upon providing Cresford with at least fifteen (15) days written notice, or in the event the contractor does not want to be reassigned as required by Cresford, the Contractor will be given fifteen(15) written notice.

8. Severability

Every provision of this agreement is intended to be severable. If any term of provision is illegal or invalid for any reason whatsoever, such illegality shall not affect the validity of the remainder of this Agreement.

- 9. This Agreement shall be governed by and construed to be in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and each of us agrees to submit to the non-exclusive jurisdiction of the Courts of the Province of Ontario.

Paragraphs 1 through 9 and Schedule A are an integral part hereto. Both undersigned parties acknowledge that they have read all paragraphs and schedules of this agreement and they accept and agree to the terms thereof.

DATED at Toronto, this 9th day of AUG, 2016



Mike Catsiliras



Maria Athanasoulis

President, Marketing & Sales

Schedule A

Commission Structure for Halo

- I. A bonus commission of Two Hundred Thousand Dollars (\$200,000) will be payable to the Contractor for the Halo Condominiums. The first 50% (\$100,000) will be payable after the Agreement of Purchase and Sale ("APS") becomes firm. The second 50% (\$100,000) will be payable upon successful final closing of the units. ("Deferred Commission").

If the Agreement is terminated due to a Termination Event or at the option of the Contractor, The Contractor shall forfeit any Deferred Commissions and/or bonuses due.

Schedule A – First Amendment

Commission Structure for 33 YORKVILLE

- 2. A bonus commission of Three Hundred Thousand dollars (\$300,000) will be payable to the Contractor for the 33 Yorkville Condominiums. The first 50% (\$150,000) will be payable after the Agreement of Purchase and Sale (“APS”) becomes firm. The second 50% (\$150,000) will be payable upon successful final closing of the units. (“Deferred Commission”).

If the Agreement is terminated due to a Termination Event or at the option of the Contractor, The Contractor shall forfeit any Deferred Commissions and/or bonuses due.

DATED at Toronto, this 10th day of Sept., 2017


Mike Catsiliras


Maria Athanasoulis
President, Marketing & Sales

Schedule A – Second Amendment

Commission Structure for YSL Condominiums

1. A bonus commission of Three Hundred Thousand dollars (\$300,000) will be payable to the Contractor for the YSL condominiums. The first 50% (\$150,000) will be payable after the Agreement of Purchase and Sale (“APS”) becomes firm. The second 50% (\$150,000) will be payable upon successful final closing of the units (“Deferred Commission”).

If the Agreement is terminated due to a Termination Event or at the option of the Contractor, The Contractor shall forfeit any Deferred Commissions and/or bonuses due.

DATED at Toronto, this 11 day of Nov, 2018


Mike Catsiliras


Maria Athanasoulis
President, Marketing & Sales

Attachment 3

Attachment 4

20 - YG Limited Partnership
 AP - Accounts Payable / Claims
 Summary Aged Payables List
 As of Mar31/20

Aged by Invoiced Date

Code	Supplier Name	Net A/P	Current	31-60Days	61-90Days	Over90Days	Holdback
2460242	2460242 Ontario Inc.	40,466.02	24,536.65	23,929.37	0	0	0
2600024	2600024 Ontario Inc.	67,000.00	0	67,000.00	0	0	0
1STCHO	1st Choice Disposal	8,916.81	426.3	832.05	1,749.94	5,908.52	0
AECPAR	AEC Paralegal Corporation	593.25	0	0	0	593.25	0
AIMHOM	Aim Home Realty Inc	15,018.01	0	0	0	15,018.01	0
AIRBER	Aird & Berlis LLP	15,781.60	8,651.07	7,130.53	0	0	0
ALTGRO	Altus Group Limited	20,959.70	542.12	2,422.98	0	17,994.60	0
ALUINC	AlumaSafway, Inc	46,505.15	0	28,210.45	0	18,294.70	0
ARCALL	Architects Alliance	1,008,914.62	46,505.90	146,076.70	146,168.69	670,163.33	0
BAAGRO	Baaron Group Inc.	20,397.91	0	1,582.00	0	18,815.91	0
BACONS	BA Consulting Group Ltd.	6,844.99	2,178.08	2,895.63	0	1,771.28	0
BAYSTR	Bay Street Group Inc	45,737.98	0	0	0	45,737.98	0
BENCON	BENP Mortgage Investment Corp	39,267.12	0	0	0	39,267.12	0
BENCON	Bank Tom	2,007.72	0	492.79	0	1,514.93	0
BENJON	Bennett Jones LLP	44,825.62	0	243.3	4,439.49	40,142.83	0
BLAMCM	Blaney McMurtry LLP	100,056.60	0	8,142.96	0	91,913.64	0
BLICOU	Blizzard Courier Service Ltd.	335.5	0	0	0	335.5	0
BVDGRO	BVDA Group Ltd.	1,130.00	0	0	0	1,130.00	0
CANCAN	Canon Canada Inc.	37.9	0	37.9	0	0	0
CBSCAP	CBSC Capital Inc.	1,574.50	0	838.87	0	735.63	0
CITDOO	Citywide Door & Hardware Inc.	1,130.00	0	0	0	1,130.00	0
CITPER	The Treasurer, City of Toronto	500	0	500	0	0	0
CITREA	Cityscape Real Estate Ltd.	246,998.63	0	0	0	246,998.63	0
CLAREA	Homelife Classic Realty Inc	12,478.00	0	0	0	12,478.00	0
CONPLU	Re/Max Condo Plus Corp	16,358.00	0	0	0	16,358.00	0
CREBEL	Cresford Real Estate Corporation	5,759.00	0	0	5,759.00	0	0
DALLES	Dale & Lessmann LLP	982.38	982.38	0	0	0	0
DEKCORP	Dekla Corporation	0	0	0	0	0	25,000.00
ENBGAS	Enbridge Gas Inc.	0.01	0	0	0	0.01	0
ENTCOR	Entuitive Corporation	5,508.75	0	0	0	5,508.75	0
ERAARC	E.R.A. Architects Inc.	43,455.57	0	0	0	43,455.57	0
FEDWIR	Federal Wireless Communicatio	4,291.74	0	0	0	4,291.74	0
FORHIL	Forest Hill Real Estate Inc	30,876.00	0	0	0	30,876.00	0
FOSINT	Foster Interactive Inc.	1,627.20	0	0	813.6	813.6	0
FOUSEL	Four Seasons Hotel Toronto	97,930.35	0	0	0	97,930.35	0
GFLINF	GFL Infrastructure Goup Inc.	3,663,177.53	296,561.83	0	513,400.92	2,853,214.78	445,803.10
HERRES	Heritage Restoration Inc	393,005.53	0	0	0	393,005.53	0
HOMFRO	HomeLife Frontier Realty Inc.	25,376.00	0	0	0	25,376.00	0
HOMLAN	HomeLife Landmark Realty Inc.	1,669,032.01	0	0	0	1,669,032.01	0
HOMSTA	Home Standards Brickstone Rea	90,068.00	0	0	0	90,068.00	0
HOWGAS	Howe Gastmeier Chapnik Limite	668.11	0	0	0	668.11	0
HUNASS	Hunter & Associates Ltd.	2,923.88	0	0	0	2,923.88	0
HYDMIS	Toronto Hydro-Electric System	44,097.88	0	0	0	44,097.88	0
INNPAT	Innocon Partnership	50,239.12	0	0	1,296.34	48,942.78	0
INVHAR	Investments Hardware Limited	14,471.85	0	257.3	4,161.60	10,052.95	0
ISHERW	Isherwood	107,416.33	18,659.01	24,789.71	0	63,967.61	0
JABAST	Jablonsky, Ast and Partners	349,631.55	0	3,851.55	11,300.00	334,480.00	0
JANROS	JanetRosenberg&Studio Inc.	13,152.35	0	3,030.94	0	10,121.41	0
JDLREA	JDL Realty Inc.	20,478.00	0	0	0	20,478.00	0
JENHUG	Jensen Hughes Consulting Cana	34,317.01	18,002.14	0	0	16,314.87	0
KELWIL	Keller Williams Referred	23,036.00	0	0	0	23,036.00	0
KENREA	Century 21 Kennect Realty	53,036.00	0	0	0	53,036.00	0
KINQUA	Century 21 King's Quay Real E	37,594.00	0	0	0	37,594.00	0
KOHPED	Kohn Pedersen Fox Associates	1,836,000.00	0	0	0	1,836,000.00	0
KRMDES	Kramer Design Associates Limi	74,184.50	0	0	0	74,184.50	0
LAMASS	Lam & Associates Ltd.	129,925.39	0	31,194.40	39,103.39	59,627.60	0
LANREA	LandpowerReal Estate Ltd.	2,256,548.80	17,018.00	0	37,578.00	2,201,952.80	0
LEAEDG	Century 21 Leading Edge Realt	10,878.00	0	0	0	10,878.00	0
LERBAT	Lerch Bates	11,900.00	0	0	0	11,900.00	0
LIVPAT	Live Patrol Inc.	11,187.00	1,864.50	1,864.50	1,864.50	5,593.50	0
LIVREA	Living Realty Inc.	88,588.00	0	88,588.00	0	0	0
MASCHO	Master's Choice Realty, Inc.	379,298.00	0	0	0	379,298.00	0

20 - YG Limited Partnership
 AP - Accounts Payable / Claims
 Summary Aged Payables List
 As of Mar31/20

Aged by Invoiced Date

Code	Supplier Name	Net A/P	Current	31-60Days	61-90Days	Over90Days	Holdback
MCIPER	McIntosh Perry	218.09	0	0	0	218.09	0
MICBRO	Michael Bros. Excavating	1,582,858.80	38,442.60	307,540.80	653,524.20	583,351.20	155,640.00
	Mike Catsiliras	282,500.00				282,500.00	
MONSTE	Montana Steele	73,927.81	477.81	14,690.00	14,690.00	44,070.00	0
MULBAN	Mulvey & Banani Lighting Inc.	29,978.91	0	1,582.00	5,311.00	23,085.91	0
MUNMEC	Municipal Mechanical Contract	11,303.14	11,303.14	0	0	0	0
MYLBUR	Myles Burke	35,798.40	0	17,899.20	0	17,899.20	0
NAFCON	Naf-Muk Contracting Inc	2,439.67	0	0	0	2,439.67	0
NEWCON	Royal LePage - New Concept	85,770.01	15,018.01	0	0	70,752.00	0
NEWWOR	HomeLife New World Realty Inc	544,355.99	0	0	283,570.00	260,785.99	0
NORAME	North American Sign Company I	2,825.00	0	0	0	2,825.00	0
ODADET	The Odan/Detech Group Inc.	5,831.20	2,214.80	1,237.35	830.55	1,548.50	0
OTICAN	Otis Canada Inc.	4,912,110.00	0	0	0	4,912,110.00	483,000.00
PETCON	PETRA Consultants Ltd.	178,856.40	0	83,168.00	0	95,688.40	0
PMSVEN	PM Sheetmetal & Ventilation	26,442.00	0	0	0	26,442.00	2,600.00
POWREA	Powerland Realty, Brokerage	10,678.00	0	0	0	10,678.00	0
PRIDEM	Priestly Demolition Inc.	374,609.80	0	0	0	374,609.80	0
PRIVAT	PricewaterhouseCoopers LLP	19,266.50	0	0	0	19,266.50	0
RAVSUR	R. Avis Surveying Inc.	53,757.52	0	8,311.15	18,758.58	26,687.79	0
REAENT	RE/MAX Realty Enterprises Inc	72,090.00	0	0	0	72,090.00	0
REAONE	Real One Realty Inc.	181,936.00	0	0	91,768.00	90,168.00	0
REAREA	RE/MAX Realtron Realty Inc.	28,117.97	0	0	0	28,117.97	0
RECCLE	Reco Cleaning Services	62,376.57	0	10,664.94	0	51,711.63	0
REPLIM	Reprodex Limited	578.23	24.23	227.59	326.57	0	0
RIGATH	Right At Home Realty Inc.	10,678.00	0	0	0	10,678.00	0
	Rosa Trading Ltd.	565,000.00				565,000.00	
ROYELI	Royal Elite Realty Inc.,Broke	16,198.00	0	0	0	16,198.00	0
SAFMAN	Safeline Management Systems I	8,723.60	0	2,576.40	813.6	5,333.60	0
SEBSTE	Sebba Steel Construction Ltd.	86,075.49	0	12,147.50	0	73,927.99	0
SIGREA	Royal LePage - Signature Real	14,578.00	0	0	0	14,578.00	0
SPLCON	WSP Canada Inc.	24,025.14	6,630.28	14,127.26	2,055.47	51,216.13	0
STACON	Stantec Consulting Ltd.	1,463.26	0	0	0	1,463.26	0
STEREN	Stephenson's Rental Services	4,678.43	4,678.43	0	0	0	0
STRAGG	Strada Aggregates	27,075.99	11,780.66	0	0	15,295.33	0
THODOR	Thompson Dorfman Sweatman LLP	6,475.77	0	0	0	6,475.77	0
TRAFIR	Trace Fire Protection Inc.	-30	0	0	0	-30	0
TRAREA	Tradeworld RealtyInc.	67,770.00	0	0	0	67,770.00	0
ULTREA	ReMax Ultimate Realty Inc.	16,718.00	0	0	0	16,718.00	0
VASDES	V.A. Siu Design Consultants	96,050.00	0	0	0	96,050.00	0
VERSTR	Verdi Structures Inc	718,680.00	718,680.00	0	0	0	50,000.00
WESGUA	Westmount Guarantee Services	444,155.00	0	0	222,955.00	221,200.00	0
YOUREN	You-Go Rental & Sales	2,808.71	411.32	476.39	548.05	1,372.95	0

Total Report 24,093,159.03 1,245,589.26 919,340.51 2,062,786.49 19,865,442.77 1,162,043.10

Less: Payments
 Westmount -444,155.00

Add: Accruals
 Taron enrolment 1,510,000.00
 Tie-back commitment 1,875,000.00

Holdbacks 1,162,043.00

28,196,047.03

Attachment 5

NOTICE OF REVISION OR DISALLOWANCE OF CLAIM
REFERENCE NUMBER 483

TO: Mike Catsiliras

Email Address: jgibson@naymarklaw.com, mcatsiliras@hotmail.com

PricewaterhouseCoopers Inc., in its capacity as the court-appointed receiver (in such capacity, the “**Receiver**”) of 480 Yonge Street Inc. and 480 Yonge Street Limited Partnership (together “**Halo**”) as appointed in the Receivership Order of The Honourable Mr. Justice Koehnen of the Ontario Superior Court of Justice (Commercial List) made March 27, 2020, hereby gives you notice that the Receiver has reviewed your Request for Amendment or your Proof of Claim, as the case may be, and has revised or rejected your Claim or any part thereof or any information relating thereto, as follows:

Request for Amendment as Submitted (if applicable)	The Proof of Claim as Submitted (if applicable)	The Claim/Information as Accepted
\$1,377,696.96	\$0.00	\$ 125,000.00, unsecured

Reasons for Revision or Disallowance:

Based on the Receiver's review of your proof of claim and our discussions regarding your claim, the Receiver has revised the basis of the assessment of your claim, and has valued your claim at \$125,000, on an unsecured basis. For clarity, this amount is inclusive of the \$24,796 amount previously acknowledged by the Receiver in its Acknowledgement of Claim, Acknowledgement Number: 112. This Notice of Revision or Disallowance (NORD) is based on the agreement reached among the parties, including your agreement not to dispute the NORD. If a dispute is filed, the Receiver reserves all rights to revise this NORD.

If you do not agree with this Notice of Revision or Disallowance, please take notice of the following:

- 1. If you dispute this Notice of Revision or Disallowance, you must, no later than 5:00 p.m. (Toronto time) on June 16, 2021, being the Business Day which is fourteen days after the Notice of Revision or Disallowance is sent by the Receiver (see paragraph 13 of the Halo Claims Procedure Order), notify the Receiver by delivery of a Notice of Dispute in accordance with the Claims Procedure Order. The form of Notice of Dispute is enclosed.**
- 2. IF YOU DO NOT DELIVER A NOTICE OF DISPUTE WITHIN THE PRESCRIBED TIME PERIOD, THIS NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU AND YOUR CLAIM SHALL BE DEEMED TO BE AS SET OUT IN THIS NOTICE OF REVISION OR DISALLOWANCE.**

DATED at Toronto, this 2nd day of June, 2021.

PRICEWATERHOUSECOOPERS INC., LIT,
SOLELY IN ITS CAPACITY AS THE COURT-APPOINTED RECEIVER OF HALO
AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY



Mica Arlette, LIT
Senior Vice President

NOTICE OF DISPUTE

We hereby give you notice of our intention to dispute the Notice of Revision or Disallowance bearing Reference Number 483 and dated _____ issued in respect of our claim.

Reasons for Dispute (attach extra sheets and copies of all supporting documentation if necessary):

Name of Creditor: _____

(Signature of individual completing this Dispute)

Date

(Please print name)

Telephone Number: _____

Email address: _____

Facsimile Number: _____

Full Mailing Address: _____

THIS FORM IS TO BE RETURNED BY PREPAID ORDINARY MAIL, COURIER, PERSONAL DELIVERY OR ELECTRONIC OR DIGITAL TRANSMISSION AND MUST BE RECEIVED NO LATER THAN 5:00 P.M. (TORONTO TIME) ON JUNE 16, 2021, BEING THE BUSINESS DAY WHICH IS FOURTEEN DAYS AFTER THE NOTICE OF REVISION OR DISALLOWANCE IS SENT BY THE RECEIVER (PURSUANT TO PARAGRAPH 13 OF THE HALO CLAIMS PROCEDURE ORDER) TO:

PricewaterhouseCoopers Inc.
in its capacity as the receiver of Halo
PwC Tower
18 York Street, Suite 2600
Toronto, ON M5J 0B2

Attention: Tammy Muradova
E-mail: halo.clover@pwc.com

TAB B

SCHEDULE "B" – PRIORITY OF CLAIM

As a joint employer, YSL failed to pay Catsiliras wages, salaries, commissions or compensation for services rendered during the period beginning on the day that is six months before the date of the initial bankruptcy event. This amount exceeded \$2,000.00. Catsiliras accordingly has a priority claim for \$2,000.00 pursuant to sections 81.3 and 136(1)(d) of the BIA.

Appendix “E”

MINUTES OF SETTLEMENT
(DAVID RYAN MILLAR)

WHEREAS YG Limited Partnership and YSL Residences Inc. (collectively, “YSL”) filed Notices of Intention to Make a Proposal on April 30, 2021 pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**Proposal Proceedings**”);

AND WHEREAS KSV Restructuring Inc. (“KSV”) is the proposal trustee (the “**Proposal Trustee**”) in connection with the Proposal Proceedings;

AND WHEREAS YSL made a proposal which was approved by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) on July 16, 2021 (the “**Proposal**”);

AND WHEREAS David Ryan Millar (the “**Creditor**”) filed an amended proof of claim in the Proposal Proceedings claiming to be a creditor of YSL in the amount of \$734,996.71;

AND WHEREAS the Proposal Trustee and Creditor have been negotiating a resolution of the Creditor’s claim in good faith;

AND WHEREAS for good and valuable consideration, the receipt and sufficiency of which is hereby irrevocably acknowledged, the Proposal Trustee and Creditor have agreed to settle the Creditor’s claim on the following terms:

1. Subject to Court approval, the Creditor’s claim shall be admitted as an unsecured Proven Claim (as defined in the Proposal) in the amount of \$450,000.00.
2. The Proposal Trustee shall bring a motion in the Proposal Proceedings as soon as practicable to seek an order approving these Minutes of Settlement (the “**Approval Order**”) and the efficacy of these Minutes of Settlement shall be conditional upon the granting of the Approval Order.
3. Entering into these Minutes of Settlement is entirely without prejudice to the Creditor’s rights to argue any position regarding the validity and quantum of its claim on the motion seeking the Approval Order (or on any appeal thereof) if any party objects to the approval of these Minutes of Settlement. If the Approval Order is not granted, then the Creditor shall be entitled to argue any position regarding the validity and quantum of its claim as if these Minutes of Settlement had not been entered into and nothing herein shall be used in any way in adjudicating or negotiating a resolution of the Creditor’s claim.
4. The parties hereto represent that they have either obtained legal advice concerning these Minutes of Settlement or had an adequate opportunity to do so, that they have reviewed and understand these Minutes of Settlement, that they are voluntarily entering into these Minutes of Settlement, and that they will not engage in any action which would conflict with the provisions of the Minutes of Settlement either in word or in spirit.
5. The provisions of these Minutes of Settlement shall enure to the benefit of and be binding upon the respective successors and assigns of the parties hereto.

6. The parties agree that the recitals to these Minutes of Settlement are true and correct statements and form an integral part of these Minutes of Settlement.

7. These Minutes of Settlement constitute the entire agreement between the parties and supersede all prior agreements, representations, warranties, statements, arrangements and understandings, whether oral or written, express or implied, with respect to the subject matter herein.

8. These Minutes of Settlement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein, and the parties irrevocably attorn to the jurisdiction of the Court for the purpose of any proceedings that may be brought to construe or enforce these Minutes of Settlement.

9. These Minutes of Settlement may be executed by the parties in one or more separate counterparts, each of which when so executed shall constitute and be deemed to be an original and shall be binding upon and enure to the benefit of each of the parties having executed these Minutes of Settlement or any counterpart hereof from the time of the execution and delivery thereof and all such counterparts shall together constitute one and the same document.

IN WITNESS WHEREOF, the parties hereto have executed these Minutes of Settlement personally or by their proper signing officers who have been duly authorized to do so.

DATED as of this 28th day of April, 2022.

**KSV RESTRUCTURING INC.,
IN ITS CAPACITY AS THE PROPOSAL
TRUSTEE OF YG LIMITED PARTNERSHIP AND
YSL RESIDENCES INC., AND NOT IN ITS
PERSONAL CAPACITY**

by 

Name: Mitch Vininsky

Title: Managing Director

SIGNED, SEALED & DELIVERED

in the presence of:



Witness

Print Name: Denise Wilkins



DAVID RYAN MILLAR

(seal)

MINUTES OF SETTLEMENT
(MIKE CATSILIRAS)

WHEREAS YG Limited Partnership and YSL Residences Inc. (collectively, “YSL”) filed Notices of Intention to Make a Proposal on April 30, 2021 pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**Proposal Proceedings**”);

AND WHEREAS KSV Restructuring Inc. (“KSV”) is the proposal trustee (the “**Proposal Trustee**”) in connection with the Proposal Proceedings;

AND WHEREAS YSL made a proposal which was approved by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) on July 16, 2021 (the “**Proposal**”);

AND WHEREAS Mike Catsiliras (the “**Creditor**”) filed an amended proof of claim in the Proposal Proceedings claiming to be a creditor of YSL in the amount of \$681,190.00;

AND WHEREAS the Proposal Trustee and Creditor have been negotiating a resolution of the Creditor’s claim in good faith;

AND WHEREAS for good and valuable consideration, the receipt and sufficiency of which is hereby irrevocably acknowledged, the Proposal Trustee and Creditor have agreed to settle the Creditor’s claim on the following terms:

1. Subject to Court approval, the Creditor’s claim shall be admitted as an unsecured Proven Claim (as defined in the Proposal) in the amount of \$268,641.00.
2. The Proposal Trustee shall bring a motion in the Proposal Proceedings as soon as practicable to seek an order approving these Minutes of Settlement (the “**Approval Order**”) and the efficacy of these Minutes of Settlement shall be conditional upon the granting of the Approval Order.
3. Entering into these Minutes of Settlement is entirely without prejudice to the Creditor’s rights to argue any position regarding the validity and quantum of its claim on the motion seeking the Approval Order (or on any appeal thereof) if any party objects to the approval of these Minutes of Settlement. If the Approval Order is not granted, then the Creditor shall be entitled to argue any position regarding the validity and quantum of its claim as if these Minutes of Settlement had not been entered into and nothing herein shall be used in any way in adjudicating or negotiating a resolution of the Creditor’s claim.
4. The parties hereto represent that they have either obtained legal advice concerning these Minutes of Settlement or had an adequate opportunity to do so, that they have reviewed and understand these Minutes of Settlement, that they are voluntarily entering into these Minutes of Settlement, and that they will not engage in any action which would conflict with the provisions of the Minutes of Settlement either in word or in spirit.
5. The provisions of these Minutes of Settlement shall enure to the benefit of and be binding upon the respective successors and assigns of the parties hereto.

6. The parties agree that the recitals to these Minutes of Settlement are true and correct statements and form an integral part of these Minutes of Settlement.

7. These Minutes of Settlement constitute the entire agreement between the parties and supersede all prior agreements, representations, warranties, statements, arrangements and understandings, whether oral or written, express or implied, with respect to the subject matter herein.

8. These Minutes of Settlement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein, and the parties irrevocably attorn to the jurisdiction of the Court for the purpose of any proceedings that may be brought to construe or enforce these Minutes of Settlement.

9. These Minutes of Settlement may be executed by the parties in one or more separate counterparts, each of which when so executed shall constitute and be deemed to be an original and shall be binding upon and enure to the benefit of each of the parties having executed these Minutes of Settlement or any counterpart hereof from the time of the execution and delivery thereof and all such counterparts shall together constitute one and the same document.

IN WITNESS WHEREOF, the parties hereto have executed these Minutes of Settlement personally or by their proper signing officers who have been duly authorized to do so.

DATED as of this 28th day of March, 2022.

**KSV RESTRUCTURING INC.,
IN ITS CAPACITY AS THE PROPOSAL
TRUSTEE OF YG LIMITED
PARTNERSHIP AND YSL RESIDENCES
INC., AND NOT IN ITS PERSONAL
CAPACITY**

by 

Name: Bobby Kofman

Title: Managing Director

SIGNED, SEALED & DELIVERED

in the presence of:



Witness

Print Name: Eva Viaros



Mike Catsiliras

(seal)

MINUTES OF SETTLEMENT
(SARVEN CICEKIAN)

WHEREAS YG Limited Partnership and YSL Residences Inc. (collectively, "YSL") filed Notices of Intention to Make a Proposal on April 30, 2021 pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**Proposal Proceedings**");

AND WHEREAS KSV Restructuring Inc. ("**KSV**") is the proposal trustee (the "**Proposal Trustee**") in connection with the Proposal Proceedings;

AND WHEREAS YSL made a proposal which was approved by the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on July 16, 2021 (the "**Proposal**");

AND WHEREAS Sarven Cicekian (the "**Creditor**") filed an amended proof of claim in the Proposal Proceedings claiming to be a creditor of YSL in the amount of \$767,399.00;

AND WHEREAS the Proposal Trustee and Creditor have been negotiating a resolution of the Creditor's claim in good faith;

AND WHEREAS for good and valuable consideration, the receipt and sufficiency of which is hereby irrevocably acknowledged, the Proposal Trustee and Creditor have agreed to settle the Creditor's claim on the following terms:

1. Subject to Court approval, the Creditor's claim shall be admitted as an unsecured Proven Claim (as defined in the Proposal) in the amount of \$383,118.00.
2. The Proposal Trustee shall bring a motion in the Proposal Proceedings as soon as practicable to seek an order approving these Minutes of Settlement (the "**Approval Order**") and the efficacy of these Minutes of Settlement shall be conditional upon the granting of the Approval Order.
3. Entering into these Minutes of Settlement is entirely without prejudice to the Creditor's rights to argue any position regarding the validity and quantum of its claim on the motion seeking the Approval Order (or on any appeal thereof) if any party objects to the approval of these Minutes of Settlement. If the Approval Order is not granted, then the Creditor shall be entitled to argue any position regarding the validity and quantum of its claim as if these Minutes of Settlement had not been entered into and nothing herein shall be used in any way in adjudicating or negotiating a resolution of the Creditor's claim.
4. The parties hereto represent that they have either obtained legal advice concerning these Minutes of Settlement or had an adequate opportunity to do so, that they have reviewed and understand these Minutes of Settlement, that they are voluntarily entering into these Minutes of Settlement, and that they will not engage in any action which would conflict with the provisions of the Minutes of Settlement either in word or in spirit.
5. The provisions of these Minutes of Settlement shall enure to the benefit of and be binding upon the respective successors and assigns of the parties hereto.

6. The parties agree that the recitals to these Minutes of Settlement are true and correct statements and form an integral part of these Minutes of Settlement.
7. These Minutes of Settlement constitute the entire agreement between the parties and supersede all prior agreements, representations, warranties, statements, arrangements and understandings, whether oral or written, express or implied, with respect to the subject matter herein.
8. These Minutes of Settlement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein, and the parties irrevocably attorn to the jurisdiction of the Court for the purpose of any proceedings that may be brought to construe or enforce these Minutes of Settlement.
9. These Minutes of Settlement may be executed by the parties in one or more separate counterparts, each of which when so executed shall constitute and be deemed to be an original and shall be binding upon and enure to the benefit of each of the parties having executed these Minutes of Settlement or any counterpart hereof from the time of the execution and delivery thereof and all such counterparts shall together constitute one and the same document.

IN WITNESS WHEREOF, the parties hereto have executed these Minutes of Settlement personally or by their proper signing officers who have been duly authorized to do so.

DATED as of this 28th day of March, 2022.

**KSV RESTRUCTURING INC.,
IN ITS CAPACITY AS THE PROPOSAL
TRUSTEE OF YG LIMITED
PARTNERSHIP AND YSL
RESIDENCES INC., AND NOT IN ITS
PERSONAL CAPACITY**

by 

Name: Bobby Kofman

Title: Managing Director

SIGNED, SEALED & DELIVERED

in the presence of:



Witness

Print Name:

Romina Mosik



(seal)

Sarven Cicekian

MINUTES OF SETTLEMENT
(MARCO MANCUSO)

WHEREAS YG Limited Partnership and YSL Residences Inc. (collectively, “YSL”) filed Notices of Intention to Make a Proposal on April 30, 2021 pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**Proposal Proceedings**”);

AND WHEREAS KSV Restructuring Inc. (“KSV”) is the proposal trustee (the “**Proposal Trustee**”) in connection with the Proposal Proceedings;

AND WHEREAS YSL made a proposal which was approved by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) on July 16, 2021 (the “**Proposal**”);

AND WHEREAS Marco Mancuso (the “**Creditor**”) filed an amended proof of claim in the Proposal Proceedings claiming to be a creditor of YSL in the amount of \$430,000.00;

AND WHEREAS the Proposal Trustee and Creditor have been negotiating a resolution of the Creditor’s claim in good faith;

AND WHEREAS for good and valuable consideration, the receipt and sufficiency of which is hereby irrevocably acknowledged, the Proposal Trustee and Creditor have agreed to settle the Creditor’s claim on the following terms:

1. Subject to Court approval, the Creditor’s claim shall be admitted as an unsecured Proven Claim (as defined in the Proposal) in the amount of \$300,281.00.
2. The Proposal Trustee shall bring a motion in the Proposal Proceedings as soon as practicable to seek an order approving these Minutes of Settlement (the “**Approval Order**”) and the efficacy of these Minutes of Settlement shall be conditional upon the granting of the Approval Order.
3. Entering into these Minutes of Settlement is entirely without prejudice to the Creditor’s rights to argue any position regarding the validity and quantum of its claim on the motion seeking the Approval Order (or on any appeal thereof) if any party objects to the approval of these Minutes of Settlement. If the Approval Order is not granted, then the Creditor shall be entitled to argue any position regarding the validity and quantum of its claim as if these Minutes of Settlement had not been entered into and nothing herein shall be used in any way in adjudicating or negotiating a resolution of the Creditor’s claim.
4. The parties hereto represent that they have either obtained legal advice concerning these Minutes of Settlement or had an adequate opportunity to do so, that they have reviewed and understand these Minutes of Settlement, that they are voluntarily entering into these Minutes of Settlement, and that they will not engage in any action which would conflict with the provisions of the Minutes of Settlement either in word or in spirit.
5. The provisions of these Minutes of Settlement shall enure to the benefit of and be binding upon the respective successors and assigns of the parties hereto.

6. The parties agree that the recitals to these Minutes of Settlement are true and correct statements and form an integral part of these Minutes of Settlement.

7. These Minutes of Settlement constitute the entire agreement between the parties and supersede all prior agreements, representations, warranties, statements, arrangements and understandings, whether oral or written, express or implied, with respect to the subject matter herein.

8. These Minutes of Settlement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein, and the parties irrevocably attorn to the jurisdiction of the Court for the purpose of any proceedings that may be brought to construe or enforce these Minutes of Settlement.

9. These Minutes of Settlement may be executed by the parties in one or more separate counterparts, each of which when so executed shall constitute and be deemed to be an original and shall be binding upon and enure to the benefit of each of the parties having executed these Minutes of Settlement or any counterpart hereof from the time of the execution and delivery thereof and all such counterparts shall together constitute one and the same document.

IN WITNESS WHEREOF, the parties hereto have executed these Minutes of Settlement personally or by their proper signing officers who have been duly authorized to do so.

DATED as of this 28th day of March, 2022.

**KSV RESTRUCTURING INC.,
IN ITS CAPACITY AS THE PROPOSAL
TRUSTEE OF YG LIMITED
PARTNERSHIP AND YSL RESIDENCES
INC., AND NOT IN ITS PERSONAL
CAPACITY**

by

Name:

Title:

SIGNED, SEALED & DELIVERED

in the presence of:



(seal)

Witness

Marco Mancuso

Print Name:

6. The parties agree that the recitals to these Minutes of Settlement are true and correct statements and form an integral part of these Minutes of Settlement.

7. These Minutes of Settlement constitute the entire agreement between the parties and supersede all prior agreements, representations, warranties, statements, arrangements and understandings, whether oral or written, express or implied, with respect to the subject matter herein.

8. These Minutes of Settlement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein, and the parties irrevocably attorn to the jurisdiction of the Court for the purpose of any proceedings that may be brought to construe or enforce these Minutes of Settlement.

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IN WITNESS WHEREOF, the parties hereto have executed these Minutes of Settlement personally or by their proper signing officers who have been duly authorized to do so.

DATED as of this 28th day of March, 2022.

**KSV RESTRUCTURING INC.,
IN ITS CAPACITY AS THE PROPOSAL
TRUSTEE OF YG LIMITED
PARTNERSHIP AND YSL RESIDENCES
INC., AND NOT IN ITS PERSONAL
CAPACITY**

by



Name: Bobby Kofman

Title: Managing Director

SIGNED, SEALED & DELIVERED

in the presence of:



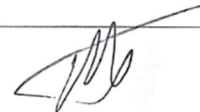
Witness

Print Name: Louie Giannakopoulos

Marco Mancuso

(seal)

Marco Mancuso



MINUTES OF SETTLEMENT
(LOUIS GIANNAKOPOULOS)

WHEREAS YG Limited Partnership and YSL Residences Inc. (collectively, “YSL”) filed Notices of Intention to Make a Proposal on April 30, 2021 pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**Proposal Proceedings**”);

AND WHEREAS KSV Restructuring Inc. (“KSV”) is the proposal trustee (the “**Proposal Trustee**”) in connection with the Proposal Proceedings;

AND WHEREAS YSL made a proposal which was approved by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) on July 16, 2021 (the “**Proposal**”);

AND WHEREAS Louis Giannakopoulos (the “**Creditor**”) filed an amended proof of claim in the Proposal Proceedings claiming to be a creditor of YSL in the amount of \$444,615.00;

AND WHEREAS the Proposal Trustee and Creditor have been negotiating a resolution of the Creditor’s claim in good faith;

AND WHEREAS for good and valuable consideration, the receipt and sufficiency of which is hereby irrevocably acknowledged, the Proposal Trustee and Creditor have agreed to settle the Creditor’s claim on the following terms:

1. Subject to Court approval, the Creditor’s claim shall be admitted as an unsecured Proven Claim (as defined in the Proposal) in the amount of \$308,067.00.
2. The Proposal Trustee shall bring a motion in the Proposal Proceedings as soon as practicable to seek an order approving these Minutes of Settlement (the “**Approval Order**”) and the efficacy of these Minutes of Settlement shall be conditional upon the granting of the Approval Order.
3. Entering into these Minutes of Settlement is entirely without prejudice to the Creditor’s rights to argue any position regarding the validity and quantum of its claim on the motion seeking the Approval Order (or on any appeal thereof) if any party objects to the approval of these Minutes of Settlement. If the Approval Order is not granted, then the Creditor shall be entitled to argue any position regarding the validity and quantum of its claim as if these Minutes of Settlement had not been entered into and nothing herein shall be used in any way in adjudicating or negotiating a resolution of the Creditor’s claim.
4. The parties hereto represent that they have either obtained legal advice concerning these Minutes of Settlement or had an adequate opportunity to do so, that they have reviewed and understand these Minutes of Settlement, that they are voluntarily entering into these Minutes of Settlement, and that they will not engage in any action which would conflict with the provisions of the Minutes of Settlement either in word or in spirit.
5. The provisions of these Minutes of Settlement shall enure to the benefit of and be binding upon the respective successors and assigns of the parties hereto.

6. The parties agree that the recitals to these Minutes of Settlement are true and correct statements and form an integral part of these Minutes of Settlement.

7. These Minutes of Settlement constitute the entire agreement between the parties and supersede all prior agreements, representations, warranties, statements, arrangements and understandings, whether oral or written, express or implied, with respect to the subject matter herein.

8. These Minutes of Settlement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein, and the parties irrevocably attorn to the jurisdiction of the Court for the purpose of any proceedings that may be brought to construe or enforce these Minutes of Settlement.

9. These Minutes of Settlement may be executed by the parties in one or more separate counterparts, each of which when so executed shall constitute and be deemed to be an original and shall be binding upon and enure to the benefit of each of the parties having executed these Minutes of Settlement or any counterpart hereof from the time of the execution and delivery thereof and all such counterparts shall together constitute one and the same document.

IN WITNESS WHEREOF, the parties hereto have executed these Minutes of Settlement personally or by their proper signing officers who have been duly authorized to do so.

DATED as of this 28th day of March, 2022.

KSV RESTRUCTURING INC.,
IN ITS CAPACITY AS THE PROPOSAL
TRUSTEE OF YG LIMITED PARTNERSHIP AND
YSL RESIDENCES INC., AND NOT IN ITS
PERSONAL CAPACITY

by 

Name: Bobby Kofman

Title: President and Managing Director

SIGNED, SEALED & DELIVERED

in the presence of:



Witness

Print Name: *marco marcuso*

 (seal)

Louis Giannakopoulos

Appendix “F”



Mitch Vininsky
ksv advisory inc.

150 King Street West, Suite 2308
Toronto, Ontario, M5H 1J9
T +1 416 932 6013
F +1 416 932 6266
mvininsky@ksvadvisory.com
ksvadvisory.com

February 10, 2022

DELIVERED BY EMAIL AND REGISTERED MAIL

Elie Laskin
Gowling WLG (Canada) LLP
1 First Canadian Place
100 King Street West, Suite 1600
Toronto, ON M5X 1G5

Dear Ms. Laskin:

Re: The Proposal of YSL Residences Inc. and YG Limited Partnership (together, the “Company”)

KSV Restructuring Inc., in its capacity as proposal trustee of the Company, acknowledges receipt of the proof of claim filed in your capacity as counsel to CBRE Limited in the amount of \$1,239,377.40.

We have disallowed the claim for the reasons outlined in the attached notice.

Should you have any questions regarding this matter, do not hesitate to contact the undersigned.

Yours very truly,

KSV RESTRUCTURING INC.
IN ITS CAPACITY AS PROPOSAL TRUSTEE OF
YSL RESIDENCES INC. AND YG LIMITED PARTNERSHIP
AND NOT IN ITS PERSONAL CAPACITY

Per: Mitch Vininsky

MV:rk
Encl.



ksv advisory inc.

150 King Street West, Suite 2308

Toronto, Ontario, M5H 1J9

T +1 416 932 6262

F +1 416 932 6266

ksvadvisory.com

Estate File No.: 31-2734090

**IN THE MATTER OF THE PROPOSAL OF
YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC.,
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

**NOTICE OF DISALLOWANCE OF CLAIM
(Subsection 135(3) of the *Bankruptcy and Insolvency Act* (“Act”))**

TAKE NOTICE THAT, as Proposal Trustee acting in the matter of the Proposal of YSL Residences Inc. (“Residences”) and YG Limited Partnership Inc. (the “Partnership” and together with Residences, the “Companies”), we have this day disallowed your claim. The reason for the disallowance is as follows:

- The claim is in respect of an invoice submitted by CBRE Limited (“CBRE”) to “Cresford” dated October 13, 2021 in the amount of \$1,096,794.16 plus HST (the “Invoice”). The Invoice refers to services rendered by CBRE in connection with serving as the exclusive listing brokerage for the land located at 363-391 Yonge Street and 3 Gerrard Street East, Toronto, Ontario, (the “Property”). The Property was to be developed by the Companies into a significant condominium project.
- A demand letter dated November 26, 2021 from CBRE to the Companies (the “CBRE Letter”) references that the Invoice was issued in respect of an Exclusive Sales Listing Agreement dated February 20, 2020 (the “Agreement”) between CBRE and the Companies, pursuant to which the Companies “agreed to pay commission equivalent to 0.65% of the Gross Sale Price of the Property” (the “Commission”). The CBRE Letter further states that “CBRE has complied with and performed its obligations under the Agreement.” The term of the Agreement is six months from February 20, 2020 to August 20, 2020 (the “Term”). The Agreement is appended to the CBRE Letter and it is unsigned.
- The Property was conveyed on or about July 22, 2021 (the “Conveyance”) to Concord Adex Inc., an entity related to Concord Properties Developments Corp., the eventual sponsor (“Sponsor”) of the Companies’ Proposal proceedings which were commenced on April 30, 2021.

- Dave Mann, CFO of the Cresford Group of Companies (“Cresford”) advised the Proposal Trustee that CBRE introduced Cresford to the Sponsor. The Sponsor advised the Proposal Trustee that “Cresford, through its representative Ted Dowbiggin, first approached Concord in early 2020 to discuss four of Cresford's distressed projects, however Concord did not have any interest in the YSL project at this time.” and that “In September/October 2020, Cresford re-engaged Concord to discuss the YSL project, after it had canvassed a number of other developers. After this outreach in fall 2020 until the time of the proposal proceedings, Cresford and Concord were consistently engaged to explore potential alternatives for the YSL project”.
- The Agreement states the following with regards to the Commission:
 - *“The Commission shall be earned by the Brokerage in the event that **during the Term:** (a) the Owner enters into a binding agreement of purchase and sale for the Property with a purchaser procured by the Brokerage, the Owner or from any other source whatsoever, and such sale closes; or (b) the Owner is a corporation, partnership or other business entity and an interest in such corporation, partnership or other business entity is transferred, whether by merger or outright purchase or otherwise in lieu of sale of the Property.”*
- Furthermore, the Agreement has a holdover clause which states that:
 - *“The Owner further agrees to pay the Brokerage the Commission **if, within 90 calendar days after the expiration of the Term,** the Property is sold to, or the Owner enters into an agreement of purchase and sale for the Property with, or negotiations continue, resume or commence and thereafter continue leading to the execution of a binding agreement of purchase and sale for the Property, provided the transaction subsequently closes, with any person or entity (including his/her/its successors, assigns or affiliates) with whom the Brokerage has negotiated (either directly or through another agent) or to whom the Property was introduced or submitted, from any source whatsoever, or to whom the Owner was introduced, from any source whatsoever, prior to the expiration of the Term; with or without the involvement of the Brokerage.”*
- The Proposal Trustee has disallowed the claim in full as:
 - The Agreement is not signed and therefore is not binding;
 - The Sponsor advised that at all times it dealt directly with the Companies and that it did not have any dealings with CBRE;
 - The Conveyance does not meet the definition of an event giving rise to a Commission; and
 - To the extent any Commission could apply, which is denied, the Commission was not earned during the Term, or within the 90 calendar days following the expiration of the Term.

AND FURTHER TAKE NOTICE, that if you are dissatisfied with our decision in disallowing your claim as set out above, you may appeal to the Ontario Superior Court of Justice ("Court") within the 30-day period after the day on which this notice is served, or within such other period as the Court may, on application made within the same 30-day period, allow.

DATED at Toronto, Ontario, this 10th day of February, 2022.

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.
IN ITS CAPACITY AS PROPOSAL TRUSTEE OF
YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC.
AND NOT IN ITS PERSONAL CAPACITY**

TAB 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
IN BANKRUPTCY AND INSOLVENCY**

THE HONOURABLE) TUESDAY, THE 24TH
)
MADAM JUSTICE GILMORE) DAY OF MAY, 2022

**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF
YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC.
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO**

ORDER
(Settlement Approval)

THIS MOTION, made by KSV Restructuring Inc. ("**KSV**"), in its capacity as the proposal trustee (the "**Proposal Trustee**") in connection with the Notices of Intention to Make a Proposal filed on April 30, 2021 by YG Limited Partnership and YSL Residences Inc. (collectively, "**YSL**") pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") for an order approving, among other things, the settlement agreements between the Proposal Trustee and each of Mssrs. Cicekian, Catsiliras, Giannaakopoulos, Mancuso and Millar as outlined and described in the Fifth Report of the Proposal Trustee dated May 11, 2022 (the "**Report**") was heard this day by judicial videoconference due to the COVID-19 pandemic.

ON READING the Report and on hearing the submissions of counsel for the Proposal Trustee, and counsel for those other parties as listed on the Counsel Slip, no one else appearing although served, as evidenced by the Affidavit of Service, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion is hereby validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

SETTLEMENT APPROVAL

2. **THIS COURT ORDERS** that the settlement agreements between the Proposal Trustee and each of Mssrs. Cicekian, Catsiliras, Giannaakopoulos, Mancuso and Millar as outlined and described in the Report (collectively, the "**Settlement Agreements**") be and are hereby approved. The Proposal Trustee is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Settlement Agreements.

**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF
YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC.**

**ONTARIO
SUPERIOR COURT OF JUSTICE –
COMMERCIAL LIST
IN BANKRUPTCY AND INSOLVENCY
(PROCEEDING COMMENCED AT TORONTO)**

**ORDER
(Settlement Approval)**

Davies Ward Phillips & Vineberg LLP
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Toronto, ON M5V 3J7

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Tel: 416.863.5502
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Lawyers for the Proposal Trustee

**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF
YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC.**

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

(PROCEEDING COMMENCED AT TORONTO)**

MOTION RECORD
(Returnable May 24, 2022 –
Approval of Settlement)

Davies Ward Phillips & Vineberg LLP
155 Wellington Street West
Toronto, ON M5V 3J7

Robin B. Schwill
(LSUC #: 384521)

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Facsimile: 416.863.0871

Lawyers for the Proposal Trustee